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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1263

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (AFL-CIO), ET AL., *Petitioners,*

v.

UNITED AIRCRAFT CORPORATION, *Respondent.*

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CONNECTICUT

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UNITED AIRCRAFT CORPORATION, *Respondent.*

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CONNECTICUT

Memorandum of Decision on Demurrer of Plaintiff to Plea in Abatement of Defendants

(Pastore, J.)

(January 9, 1964)

SUPERIOR COURT
HARTFORD COUNTY

No. 133884

UNITED AIRCRAFT CORPORATION, *Petitioner*,

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS: AERONAUTICAL INDUSTRIAL DISTRICT LODGE No. 91, IAM; INDUSTRIAL AIRCRAFT LODGE 1746, IAM, *Respondent*.

Memorandum of Decision on Demurrer of Plaintiff to Plea in Abatement of Defendants

The matter before the court presently is the demurrer of plaintiff to the plea in abatement of defendants to the substitute complaint of plaintiffs. In the substitute complaint, plaintiff pleads in two counts. In the first it seeks damages for claimed injuries sustained by it by alleged violence and misconduct of defendants engaged in during a strike at plaintiff's plants in East Hartford and Manchester in 1960. In the second count, it pleads that the allegedly offending acts mentioned in the previous count were engaged in by the defendants as a result of a conspiracy.

Defendants' plea in abatement is based upon three grounds. The first is that the filing of the substitute complaint (hereinafter referred to as the complaint) constitutes an unfair labor practice under § 8 of the National Labor Relations Act, as amended, 65 Stat. 601, 29 U.S.C.A. § 158. The gist of the second ground is that the scope of the allegations of the complaint comprehend not only a claim for damages for claimed illegal activity of defendants, but also for injuries necessarily resulting from concerted action of defendants which is protected by the Act

and as such pre-empted from state jurisdiction. The third ground is that the invocation of the "conspiracy doctrine" in the second count of the complaint constitutes an additional unfair labor practice.

By reference the exhibits attached to the plea in abatement to the original complaint are considered attached to and made part of the present plea in abatement to the substitute complaint. Furthermore, the court considers that such exhibit to the instant plea refers to the charge made by defendant Lodge 1746, I.A.M., instead of that of Lodge (Local) 743, I.A.M. By such exhibits the plea in abatement shows that on or about May 29, 1963, charges were made to the Regional Director of the N.I.L.R.B. in behalf of one or more of defendants alleging against plaintiff, in addition to charges already previously made, the bringing of the instant action for damages to be an unfair labor practice within the meaning of said § 8a()(1) and (3)(5) of said Act.

The demurrer of plaintiff to the plea in abatement is upon several grounds, as therein is more fully set forth.

From a fair reading of the allegations of the complaint, the facts concerning which damages are claimed relate to claimed acts of violence, mass picketing and other tortious conduct of defendants in relation to strike activities of a type and nature as to which the power of the state and state courts to grant relief by way of damages has not been pre-empted by the National Labor Relations Act. *United Construction Workers* v. *Laburnum Corp.*, (1954) 347 U.S. 656; *United Auto Workers* v. *Russell,* (1958) 356 U.S. 634; *Lavery's Main Street Grill, Inc.* v. *Hotel Employees Union,* (1959) 146 Conn. 93. As matter of law, the mere fact that the illegal conduct is also an unfair labor practice does not defeat the state jurisdiction. *United Construction Workers* v. *Laburnum,* supra, 660-661; *United Auto Workers* v. *Russell,* supra, 637; *Lavery's*

Main Street Grill, Inc. v. *Hotel Employees Union,* supra, 101-102.

In *Clyde Taylor Company,* 127 N.L.R. Board 103 (April 11, 1960) Taylor obtained an injunction in a state court banning peaceful picketing resorted to by the Union in protest against the discharge of employees, including a union steward. The state court had no jurisdiction to issue the injunction. Recognizing the right of all persons in good faith to protect their property and to litigate their claims in court, so long as the motivation was not a desire to defeat union organization of employees, a legitimate purpose of the Act, the National Labor Relations Board ordered dismissed the complaint which charged a violation of § 8(a)(1) of the Act for having obtained in a state court an injunction banning the picketing. Three members of the Board were of the opinion there had been no violation of said Section 8(a)(1) of the Act because of the good faith of Taylor in litigating his own rights; one member was of the opinion that there had been an unfair labor practice in obtaining the state injunction but that since it was not in bad faith and the motive was not to defeat union organization the complaint should be dismissed. It would appear from this Board ruling that the mere filing of the complaint in the present action for damages would not be considered as in violation of the Act.

Also since a demurrer does not admit conclusions, it does not admit that the filing of the complaint here is an unfair labor practice. *Smith* v. *Furness,* 117 Conn. 97, 99.

In defendants' memorandum of December 6, 1963, they request the court to take judicial notice of the claimed fact that the General Counsel of the N.L.R. Board has issued a complaint charging that plaintiff has committed an unfair labor practice by filing this damage suit. Granting that judicial notice may take the place of proof in proper circumstances, the court may not entertain such proof at the present time for the more fundamental reason that the

demurrer must be tested against the allegations to which it is directed including such proof as is properly admissible under them consistent with the rules of evidence. *Tomes* v. *Thompson,* 112 Conn. 190, 198; *Cashman* v. *Meriden Hospital,* 117 Conn. 585, 586; *O'Donnell* v. *Sargent & Company,* 69 Conn. 476.

If the proposition is granted that if such a complaint in behalf of the National Labor Relations Board has been issued, such assertion of jurisdiction by the Board would be sufficient to establish an "arguable" case in favor of initial Board jurisdiction (cf. *Marine Engineers* v. *Interlake Company,* 370 U.S. 173, 182, note 16 (1962)), it would be of no avail for there is no allegation of such fact in the plea in abatement to make it admissible. If it be assumed that such action of the N.L.R.B. General Counsel did not occur until after the filing of defendants' plea, it does not alter the situation as to its inadmissibility under present circumstances; its use must await further procedural avenues or remedies to make its interdictory effect felt.

It is difficult to understand why the fact that the scope of the averments of the complaint of plaintiff may be broad enough to include activities of defendants coming under the protection of the N.L.R.B. does or should operate automatically to pre-empt the power of the state court to adjudicate an action otherwise properly within its jurisdiction. The objection of defendants would seem more properly to present a question of the sufficiency of the stated cause of action, a matter not now before this court under the plea in abatement, and to present a problem of the admissibility of evidence on trial under appropriately framed issues.

Moreover, to concede the pre-emptive jurisdictional proposition of defendants, either because of the mere filing of plaintiff's complaint for damages, or because of the filing by defendants with the N.L.R. Board of charges against plaintiffs of committing an unfair labor practice in bringing the action, could lead to strange and unjust results.

It would be tantamount to allowing defendants, permanently or temporarily for an uncertain length of time, even beyond the limitations period perhaps, as has been stated, an immunity from liability for their tortious action gained at the expense of cutting off, or unduly delaying an injured party from his right to recover damages for his property, without recourse or compensation, to an extent which the United States Supreme Court has so far refused to decree, and which no declaration of congressional policy yet supports. *United Construction Workers* v. *Laburnum,* supra, 664; *United Auto Workers* v. *Russell,* supra, 646.

The third ground of abatement, connected with the second count, is that the invocation of the "conspiracy doctrine" constitutes an additional unfair labor practice. This claim is predicated on the fact that the allegations of the complaint in this respect also cover injuries to plaintiff necessarily resulting from activities protected under the Act. The averments of the complaint clearly direct the conspiracy claim to the claimed violence, mass picketing and other stated illegal conduct of defendants. There is no more reason for divesting the state court of jurisdiction which it has because of this dual aspect than there is in regard to the filing of the complaint.

The demurrer of plaintiff is sustained as to all grounds of the defendants' plea in abatement, viz., as to the first and third grounds of abatement, for the reason that said plea fails to show that the filing of the complaint for damages in the instant case is an unfair labor practice, and even assuming it were such, that fact alone would not operate to pre-empt state court jurisdiction in the instant matter; and as to the second ground of abatement for the reason that, so far as the plea in abatement shows, this court does have jurisdiction of the cause stated in the complaint which seeks damages attributable only to the unlawful conduct of defendants.

An order may enter accordingly.

Memorandum of Decision on Demurrer of Plaintiff to Plea in Abatement of Defendants

(Pastore, J.)

(January 9, 1964)

SUPERIOR COURT
HARTFORD COUNTY

No. 133885

UNITED AIRCRAFT CORPORATION, *Petitioner*,

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS: AERONAUTICAL INDUSTRIAL DISTRICT LODGE No. 91, IAM; INDUSTRIAL AIRCRAFT LODGE 743, IAM, *Respondent*.

Memorandum of Decision on Demurrer of Plaintiff to Plea in Abatement of Defendants

The matter before the court presently is the demurrer of plaintiff to the plea in abatement of defendants to the substitute complaint of plaintiffs. In the substitute complaint, plaintiff pleads in two counts. In the first it seeks damages for claimed injuries sustained by it by alleged violence and misconduct of defendants engaged in during a strike at plaintiff's plants at Windsor Locks and Broad Brook, Connecticut, in 1960. In the second count, it pleads that the allegedly offending acts mentioned in the previous count were engaged in by the defendants as a result of a conspiracy.

Defendants' plea in abatement is based upon three grounds. The first is that the filing of the substitute complaint (hereinafter referred to as the complaint) constitutes an unfair labor practice under § 8 of the National Labor Relations Act, as amended, 65 Stat. 601, 29 U.S.C.A. § 158. The gist of the second ground is that the scope of the allegations of the complaint comprehend not only a claim for damages for claimed illegal activity of defendants, but also for injuries necessarily resulting from concerted action of defendants which is protected by the Act

and as such pre-empted from state jurisdiction. The third ground is that the invocation of the "conspiracy doctrine" in the second count of the complaint constitutes an additional unfair labor practice.

By attached exhibits the plea in abatement shows that on or about May 29, 1963, charges were made to the Regional Director of the N.L.R.B. in behalf of one or more of defendants alleging against plaintiff, in addition to charges already previously made, the bringing of the instant action for damages to be an unfair labor practice within the meaning of said § 8(a)(1) and (3)(5) of said Act.

The demurrer of plaintiff to the plea in abatement is upon several grounds, as therein is more fully set forth.

From a fair reading of the allegations of the complaint, the facts concerning which damages are claimed relate to claimed acts of violence, mass picketing and other tortious conduct of defendants in relation to strike activities of a type and nature as to which the power of the state and state courts to grant relief by way of damages has not been pre-empted by the National Labor Relations Act. *United Construction Workers* v. *Laburnum Corp.*, (1954) 347 U.S. 656; *United Auto Workers* v. *Russell*, (1958) 356 U.S. 634; *Lavery's Main Street Grill, Inc.* v. *Hotel Employees Union*, (1959) 146 Conn. 93. As matter of law, the mere fact that the illegal conduct is also an unfair labor practice does not defeat the state jurisdiction. *United Construction Workers* v. *Laburnum*, supra, 660-661; *United Auto Workers* v. *Russell*, supra, 637; *Lavery's Main Street Grill, Inc.* v. *Hotel Employees Union*, supra, 101-102.

In *Clyde Taylor Company*, 127 N.L.R. Board 103 (April 11, 1960) Taylor obtained an injunction in a state court banning peaceful picketing resorted to by the Union in protest against the discharge of employees, including a union steward. The state court had no jurisdiction to issue

the injunction. Recognizing the right of all persons in good faith to protect their property and to litigate their claims in court, so long as the motivation was not a desire to defeat union organization of employees, a legitimate purpose of the Act, the National Labor Relations Board ordered dismissed the complaint which charged a violation of § 8(a)(1) of the Act for having obtained in a state court an injunction banning the picketing. Three members of the Board were of the opinion there had been no violation of said Section 8(a)(1) of the Act because of the good faith of Taylor in litigating his own rights; one member was of the opinion that there had been an unfair labor practice in obtaining the state injunction but that since it was not in bad faith and the motive was not to defeat union organization the complaint should be dismissed. It would appear from this Board ruling that the mere filing of the complaint in the present action for damages would not be considered as in violation of the Act.

Also since a demurrer does not admit conclusions, it does not admit that the filing of the complaint here is an unfair labor practice. *Smith* v. *Furness,* 117 Conn. 97, 99.

In defendants' memorandum of December 6, 1963, they request the court to take judicial notice of the claimed fact that the General Counsel of the N.L.R. Board has issued a complaint charging that plaintiff has committed an unfair labor practice by filing this damage suit. Granting that judicial notice may take the place of proof in proper circumstances, the court may not entertain such proof at the present time for the more fundamental reason that the demurrer must be tested against the allegations to which it is directed including such proof as is properly admissible under them consistent with the rules of evidence. *Tomes* v. *Thompson,* 112 Conn. 190, 198; *Cashman* v. *Meriden Hospital,* 117 Conn. 585, 586; *O'Donnell* v. *Sargent & Company,* 69 Conn. 476.

If the proposition is granted that if such a complaint in behalf of the National Labor Relations Board has been issued, such assertion of jurisdiction by the Board would be sufficient to establish an "arguable" case in favor of initial Board jurisdiction (cf. *Marine Engineers* v. *Interlake Company,* 370 U.S. 173, 182, note 16 (1962)), it would be of no avail for there is no allegation of such fact in the plea in abatement to make it admissible. If it be assumed that such action of the N.L.R.B. General Counsel did not occur until after the filing of defendants' plea, it does not alter the situation as to its inadmissibility under present circumstances; its use must await further procedural avenues or remedies to make its interdictory effect felt.

It is difficult to understand why the fact that the scope of the averments of the complaint of plaintiff may be broad enough to include activities of defendants coming under the protection of the N.L.R.B. does or should operate automatically to pre-empt the power of the state court to adjudicate an action otherwise properly within its jurisdiction. The objection of defendants would seem more properly to present a question of the sufficiency of the stated cause of action, a matter not now before this court under the plea in abatement, and to present a problem of the admissibility of evidence on trial under appropriately framed issues.

Moreover, to concede the pre-emptive jurisdictional proposition of defendants, either because of the mere filing of plaintiff's complaint for damages, or because of the filing by defendants with the N.L.R. Board of charges against plaintiffs of committing an unfair labor practice in bringing the action, could lead to strange and unjust results. It would be tantamount to allowing defendants, permanently or temporarily for an uncertain length of time, even beyond the limitations period perhaps, as has been stated, an immunity from liability for their tortious action

gained at the expense of cutting off, or unduly delaying an injured party from his right to recover damages for his property, without recourse or compensation, to an extent which the United States Supreme Court has so far refused to decree, and which no declaration of congressional policy yet supports. *United Construction Workers* v. *Laburnum*, supra, 664; *United Auto Workers* v. *Russell*, supra, 646.

The third ground of abatement, connected with the second count, is that the invocation of the "conspiracy doctrine" constitutes an additional unfair labor practice. This claim is predicated on the fact that the allegations of the complaint in this respect also cover injuries to plaintiff necessarily resulting from activities protected under the Act. The averments of the complaint clearly direct the conspiracy claim to the claimed violence, mass picketing and other stated illegal conduct of defendants. There is no more reason for divesting the state court of jurisdiction which it has because of this dual aspect than there is in regard to the filing of the complaint.

The demurrer of plaintiff is sustained as to all grounds of the defendants' plea in abatement, viz., as to the first and third grounds of abatement, for the reason that said plea fails to show that the filing of the complaint for damages in the instant case is an unfair labor practice, and even assuming it were such, that fact alone would not operate to pre-empt state court jurisdiction in the instant matter; and as to the second ground of abatement for the reason that, so far as the plea in abatement shows, this court does have jurisdiction of the cause stated in the complaint which seeks damages attributable only to the unlawful conduct of defendants.

An order may enter accordingly.

Memorandum of Decision on Plaintiff's Demurrer to Defendants' Amended Plea in Abatement to Substituted Complaint

(House, J.)

(February 21, 1964)

SUPERIOR COURT
HARTFORD COUNTY

No. 133884

UNITED AIRCRAFT CORPORATION, *Petitioner,*

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS: AERONAUTICAL INDUSTRIAL DISTRICT LODGE No. 91, IAM; INDUSTRIAL AIRCRAFT LODGE 1746, IAM, *Respondent.*

No. 133885

UNITED AIRCRAFT CORPORATION, *Petitioner,*

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS: AERONAUTICAL INDUSTRIAL DISTRICT LODGE No. 91, IAM; INDUSTRIAL AIRCRAFT LODGE 743, IAM, *Respondent.*

Memorandum of Decision on Plaintiff's Demurrer to Defendants' Amended Plea in Abatement to Substituted Complaint

These are companion cases in which the pleadings are identical in substance and except insofar as some factual allegations may differ in respects in no way affecting the questions of law raised by the pleadings pesently under consideration. Accordingly, but one Memorandum of Decision is being prepared to be filed in both cases.

The plaintiff's substituted complaint is in two counts. In brief, the first count alleges that the defendant unions engaged in a strike at the plaintiff's plants during which the unions and their members engaged in illegal and unlawful actions which constituted an unlawful interference

with the plaintiff's business and caused the plaintiff to incur expense for damage to property and to protect its lawful interests. The second count alleges that the alleged illegal acts specified in the first count were done in conspiracy with another union and others.

To this substituted complaint the defendants pleaded in abatement that the court lacked jurisdiction over the subject matter contained in the substituted complaint. The plaintiff filed a motion to erase the plea in abatement for want of jurisdiction over the subject matter of the plea and this motion was denied. Thereupon the plaintiff demurred to the defendants' plea in abatement on nine grounds and this demurrer to the plea in abatement was sustained on all grounds in a lengthy, well reasoned opinion by Pastore, J.

Subsequently the defendants filed an "Amended Plea in Abatement to Substituted Compaint" and to this pleading the plaintiff has demurred. The sufficiency of that demurrer is the present matter for determination by the court.

The amended plea in abatement to the substituted complaint, it is noted, is verbatim the same as the original plea in abatement to the substituted complaint except that whereas the original plea in abatement to the substituted complaint attempted to incorporate by reference an earlier plea in abatement filed June 3, 1963 by defendants to the original complaint together with exhibits attached thereto, the present amended plea in abatement to the substituted complaint not only recites that it incorporates by reference the entire June 3, 1963 original plea in abatement to the original complaint together with the exhibits thereto attached, but further and in addition incorporates by reference into the present plea as defendants' Exhibit 1 a copy of a "Motion for Leave to Withdraw Motion to Consolidate Cases and to further Amend Complaint dated August 13, 1963, and to File Substitute Motion together with Appendix attached thereto" dated August 30,

1963 and filed by Counsel for the General Counsel, National Labor Relations Board, First Region in Cases No. 1-CA-3355 et al before The National Labor Relations Board, First Region (which latter motion, incidentally, expressly incorporates by reference all the allegations of the original complaint which it seeks to amend and supplement but which has not been filed or made an exhibit in these proceedings).

In other words, the amended plea in abatement to the substituted complaint which is the subject of the present demurrer purports to incorporate by reference within its allegations not only (a) an earlier superseded plea in abatement with the exhibits attached thereto, but (b) a motion to amend a complaint filed in a proceeding before the National Labor Relations Board which, in turn, (c) incorporates by reference all the allegations of the original complaint in that proceeding—which original complaint is neither attached nor filed nor made an exhibit.

The result is, obviously, confusion worse confounded! It is difficult to find any part of the defendants' pleading which follows the most elemental rules of Connecticut Practice and Procedure. In fact, even to file the present amended plea in abatement without the consent of the plaintiff or after a motion for leave to file it had been filed and granted by this court was improper pleading. Practice Book, Sec. 132. See *Mitchell* v. *Smith*, 74 Conn. 125; *Brockett* v. *Fair Haven & W. R. Co. et al*, 73 Conn. 428; Hazel Cole's Appeal from Probate, 18 Conn. Sup. 167, 168.

"Rules of pleading are not made for the purpose of tripping up the unknowing or unwary. They are designed to clarify and fix the issues and to confine the judicial inquiry necessary to decide the issues within reasonable and relevant limits. . . ." *Salem Park, Inc.* v. *Salem*, 149 Conn. 141, 144. "Pleadings have their place in our system of jurisprudence. While they are not held to the strict and artificial standard that once prevailed, we still

cling to the belief, even in these iconoclastic days, that no orderly administration of justice is possible without them." *Malone* v. *Steinberg,* 138 Conn. 718, 721. "Pleadings should be direct, precise and specific . . . The court should not have to mathematically dissert the pleadings in order to understand them. The forms of pleadings and the rules governing their use are to be found in the Practice Book. Since 1879 it has served its purpose, occasional changes being adopted as the need is demonstrated . . . Innovations should not be put into practice ex parte by counsel." *Vigue* v. *John Hancock Mutual Life Ins. Co.,* 147 Conn. 305, 306.

Even without its attempted incorporation by reference of undisclosed matter incorporated by reference, the present plea in abatement to the substituted complaint utterly and completely fails to comply with the basic and first requirement of pleading in this jurisdiction. This is set out in Sec. 70 of the Practice Book and Sec. 52-98 of the General Statutes:

> "Each pleading shall contain a plan and concise statement of the material facts on which the pleader relies, but not of the evidence by which they are to be proved, such statement to be divided into paragraphs numbered consecutively, each containing as nearly as may be a separate allegation."

The defendants' present amended plea in abatement to the substituted complaint is anything but "a plain and concise statement of the material facts on which the pleader relies." It improperly attempts to incorporate within it evidence by which the material facts are sought to be proved. It is not "divided into paragraphs numbered consecutively, each containing as nearly as may be a separate allegation." In fact, it does not appear that there has even been an attempt by the defendants to comply with Sec. 70 of the Practice Book and Sec. 52-98 of the General Statutes.

Nor is the court powerless to compel compliance with the basic rules for proper pleading when there is such a gross disregard for them. Section 52-119 of the General Statutes expressly provides "Parties failing to plead according to the rules and orders of the court may be nonsuited or defaulted, as the case may be."

However, rather than attack the gross deficiencies of the defendants' plea, the plaintiff has demurred to it, thus presenting the question as to whether this amended plea in abatement has cured the insufficiencies of the prior plea as to which this court by Pastore, J. sustained plaintiff's demurrer. "Under these circumstances the court, in the interest of economy of judicial procedure, although rather against its better judgment, has decided to take the case as presented by the parties." *Swainbank* v. *Coombs,* 19 Conn. Sup. 391, 394.

As already noted, the only change in the present amended plea in abatement from the prior plea as to which the plaintiff's demurrer was sustained is in the additional language in the first and second paragraphs of the amended plea which incorporates into the plea as defendants' Exhibit 1 a document entitled "Motion for Leave to Withdraw Motion to Consolidate Cases and to Further Amend Complaint, dated August 13, 1963, and to File Substitute Motion together with Appendix A attached thereto." So the narrow issue now before the court is whether this added allegation cures the defects for which this court has already sustained a demurrer.

Before a consideration of the merits of this issue are discussed two matters should be noted:

a) the defendants did not comply with the requirements of Sec. 91, paragraph 2 of the Practice Book with respect to serving and filing the Exhibit 1 referred to in the amended plea in abatement which, instead of being served and filed, was marked as an Exhibit for Identification.

b) Exhibit 1 referred to in the plea (marked as Exhibit 1 for identification at the hearing) is not a complete document in that it is entitled "Motion for Leave to Withdraw Motion to Consolidate Cases and to Further Amend Complaint, dated August 13, 1963, and to File Substitute Motion together with Appendix A attached thereto." Attached to this motion in the exhibit is a form entitled "First Amended Charge Against Employer" dated June 10, 1963 which states that "The charging party re-alleges and incorporates herein by reference all allegations of the original charge (initially filed as Fourteenth Amended Charge)." There is also attached a form entitled "Charge Against Employer" dated June 6, 1963 which states that "The charging party hereby realleges and incorporates herein by reference all allegations of the Thirteenth Amended Charge filed April 15, 1963."

Nowhere on the exhibit does it appear, nor has it been alleged or shown, whether or not the "Motion for Leave to Withdraw Motion to Consolidate Cases and to Further Amend Complaint dated August 13, 1963" was granted or denied, nor does it anywhere appear nor has it been alleged or shown whether or not the "Motion to File Substitute Motion Together with Appendix A attached thereto" has been granted or denied. Nor has this court been in any way apprised of what was purportedly "re-alleged" and incorporated by reference in the "Charges against Employer" stated in Exhibit 1.

This court can hardly be expected to evaluate the effect of a document, the contents of which are not disclosed, or of a copy of motions filed in another matter when it has no knowledge whether the motions were granted or denied!

In addition, it does not appear that the pleading of the Exhibit 1 cures the defects in the amended plea in abatement as noted by this court in sustaining the demurrer to the original plea in abatement. The defendants' failure adequately to plead over after the sustaining of the demurrer leaves this court with no other course than to render judgment for the plaintiff on the present demurrer which is on the same grounds as that previously sustained. *Leger* v. *Kelley,* 142 Conn. 585, 587; *Cashman* v. *Meriden Hospital,* 117 Conn. 585, 589.

The only possible relevancy of the only added allegation with regard to Exhibit 1 referred to in the present plea is with respect to the allegation that plaintiff's action in filing the complaint in this action was an unfair labor practice. That same allegation was made in the original plea in abatement and this court by Pastore, J. sustained the demurrer addressed to it. The concluding language of his Memorandum of Decision dated January 8, 1964 is clear and precise:

> "The demurrer of plaintiff is sustained as to all grounds of the defendants' plea in abatement, viz., as to the first and third grounds of abatement, for the reason that said plea fails to show that the filing of the complaint for damages in the instant case is an unfair labor practice, and even assuming it were such, that fact alone would not operate to pre-empt state court jurisdiction in the instant matter; and as to the second ground of abatement for the reason that, so far as the plea in abatement shows, this court does have jurisdiction of the cause stated in the complaint which seeks damages attributable only to the unlawful conduct of the defendants."

There is no need to quote further from Judge Pastore's Memorandum of Decision or re-cite the authorities therein cited. It must be held that the defendants' amended plea in abatement does not cure the insufficiencies for which the demurrer to the original plea in abatement was sustained. Accordingly, for the reasons hereinbefore noted and those set forth in the January 8, 1964 Memorandum of Decision of Judge Pastore, the demurer to the amended plea in abatement to the substituted complaint is sustained.

Memorandum Re Defendants' Demurrer to the Relief Sought

(Cotter, J.)

(March 25, 1965)

SUPERIOR COURT
HARTFORD COUNTY

No. 133884

UNITED AIRCRAFT CORPORATION, *Petitioner,*

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS: AERONAUTICAL INDUSTRIAL DISTRICT LODGE No. 91, IAM; INDUSTRIAL AIRCRAFT LODGE 1746, IAM, *Respondent.*

No. 133885

UNITED AIRCRAFT CORPORATION, *Petitioner,*

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS: AERONAUTICAL INDUSTRIAL DISTRICT LODGE No. 91, IAM; INDUSTRIAL AIRCRAFT LODGE 743, IAM, *Respondent.*

In case No. 133884 by virtue of a more specific statement the plaintiff claims damages of $8,710,193.00 and in case No. 133885 in the same manner claims damages of $4,034,070.00.

The plaintiff United Aircraft Corporation seeks to recover damages by reason of acts of violence and misconduct engaged in by the defendant unions during a strike at plaintiff's plants from June 8, 1960 to August 11, 1960. The following has taken place in the case so far: two pleas in abatement claiming that this Court lacked jurisdiction

over the subject matter of the actions were sustained; two motions to stay proceedings were denied; and an action seeking an injunction against the plaintiff in the Federal District Court was denied. *International Association of Machinists* v. *United Aircraft Corporation,* 56 LRRM 2389, 49 CCH Labor Cases P 18,959 (D. Conn. 1964); aff'd, 333 F.2d 367 (2nd Cir. 1964); cert. denied, 379 U.S. 946 (1964).

A motion for more specific statement dated May 7, 1964, seeking in paragraph 8 a more specific statement of plaintiff's claimed damages was granted as modified by Judge Dube and the plaintiff filed its more specific statement on November 13, 1964. The defendants now demur to the relief sought. Reference is apparently made to the plaintiff's substituted complaint dated and filed June 4, 1963, and this memorandum concerns the demurrer as referring to the substituted complaint.

Paragraphs 9, 10, 11, 12 and 14 of the first and second counts of its substituted complaint claim tortious acts during the strike and in paragraph 17 of the first count and paragraph 19 of the second count the plaintiff apparently claims damages by virtue of these acts.

Judge Pastore on January 8, 1964 remarked, in part, in an opinion on this question as follows: "From a fair reading of the allegations of the complaint, the facts concerning which damages are claimed relate to claimed acts of violence, mass picketing and other tortious conduct of defendants in relation to strike activities of a type and nature as to which the power of the state and state courts to grant relief by way of damages has not been preempted by the National Labor Relations Act."

The defendants filed an amended plea in abatement dated January 11, 1964, realleging that plaintiff seeks damages not only for defendants' tortious acts but also for protected strike activities. Judge House, in his memorandum of de-

cision dated February 21, 1964 sustaining the demurrer, quoted Judge Pastore and based his decision in part on the reasons in Judge Pastore's memorandum.

Since the only pleading concerning the matter of damages is plaintiff's more specific statement dated November 12, 1964, filed in compliance with defendants' motion dated May 7, 1964. Paragraph 8 of defendants' motion sought to have paragraph 17 of the first count of plaintiff's substituted complaint and paragraph 19 of the second count made more specific concerning plaintiff's damages. Paragraph 8 of the motion was modified by Judge Dube to require the plaintiff to furnish "an accountant's breakdown, an accountant's report as to what you intend to go after."

Paragraph 8 of plaintiff's more specific statement is an accountant's report, as ordered, and makes more specific paragraph 17 of the first count of plaintiff's substituted complaint and paragraph 19 of the second count, which seem to be plaintiff's claimed injuries resulting from the so-called tortious acts, alleged in paragraphs 9, 10, 11, 12 and 14 of the substituted complaint. The plaintiff can only claim damages for tortious acts, as Judge Pastore and Judge House decided.

The plaintiff admits it cannot recover damages for losses caused by protected strike activities and agreed in oral argument that it claims damages only for illegal conduct.

Clearly, at the time of trial, the plaintiff can only introduce evidence to show illegal and tortious conduct so that the defendant can in no way be harmed.

The extent of state court jurisdiction in a common law tort action arising out of a labor dispute has been clearly defined by the Supreme Court of the United States.

Peaceful activity is not subject to state decree or regulation either by an award of damages or by injunctive relief.

The jurisdiction left in the state courts relative to granting damages exists in cases where violent torts are involved. Federal law requires that relief in the form of monetary damages must be restricted to the results of alleged violent torts. *San Diego Building Trades Council* v. *Garmon,* 359 U.S. 236, 43 LRRM 2838. Damages, of course must be separated and apart from economic losses resulting from lawful conduct during a legal strike because the state courts do not have jurisdiction to award damages which might be due to lawful and legal activities. *Local 20 Teamsters* v. *Morton,* 377 U.S. 252, 56 LRRM 2225.

A demurrer to the relief sought raises the question of the kind of relief sought, such as injunction, declaratory judgment, and damages, not whether a particular element of damages is compensable. *Seidler* v. *Burns,* 84 Conn. 111, 113 (1911); *Urban* v. *Hartford Gas Co.,* 139 Conn. 301, 304 (1952); *Wexler Construction Co.* v. *Housing Authority of Norwich,* 144 Conn. 187, 192 (1956).

The defendants' demurrer to the relief sought seems to claim that an alleged element of plaintiff's damage claim is not compensable.

Defendants' demurrer to the relief sought is overruled.

Memorandum of Decision on Plaintiff's Demurrer to Defendants' First, Second, Third, Sixth and Seventh Special Defenses to First and Second Counts of Substituted Complaint

(Parskey, J.)

(March 14, 1966)

SUPERIOR COURT
HARTFORD COUNTY

No. 133884

UNITED AIRCRAFT CORPORATION, *Petitioner,*

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS: AERONAUTICAL INDUSTRIAL DISTRICT LODGE NO. 91, IAM; INDUSTRIAL AIRCRAFT LODGE 1746, IAM, *Respondent.*

No. 133885

UNITED AIRCRAFT CORPORATION, *Petitioner,*

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS: AERONAUTICAL INDUSTRIAL DISTRICT LODGE NO. 91, IAM; INDUSTRIAL AIRCRAFT LODGE 743, IAM, *Respondent.*

In their first, second and third special defenses to both counts the defendants raise again the jurisdictional issue of federal pre-emption, this time as a special defense under the authority of *McNish* v. *American Brass Co.*, 1952, 139 Conn. 44, 50. The first special defense alleges that the in-

stitution of the present actions constitutes arguably an unfair labor practice in violation of Section 8(a) (1) of the Labor Management Relations Act, 1947 (the Taft Hartley Act). The second special defense alleges that the relief which the plaintiff seeks covers all strike losses without differentiating losses resulting from peaceful primary strike activity protected by the Taft Hartley Act and losses resulting from tortious misconduct and because of the inclusion of arguably protected activity the pre-emption doctrine applies. The third special defense claims that the plaintiff by invoking the conspiracy violates rights protected by Section 7 of the Taft Hartley Act and therefore this court lacks jurisdiction of the subject matter.

The three jurisdictional claims of the defendants' palimpsest, now included by way of special defense, have already been passed upon by the court. The claims in the first and third special defenses were considered by Pastore J. in his memorandum on the defendants' plea in abatement. The jurisdictional claim in the second special defense was considered by Cotter J. with respect to the defendants' demurrer to the relief sought. No new arguments have been advanced which would persuade the court to change its opinion merely because the claims are now clothed in a different garment. With reference to the second special defense it may well be that the plaintiff's actions are merely a disguised effort to compel the defendants to compensate the plaintiff for its strike losses; if this turns out to be the case the court lacks neither the discernment nor the authority to deal with this matter appropriately at the trial. However, the court cannot assume this to be the case at this stage of the proceedings.

In their sixth special defense the defendants make the tridentated claim of waiver, estoppel and laches. The claim of laches, while applicable to suits in equity, does not apply to actions at law. *Weil* v. *Poulsen*, 1936, 121 Conn. 281, 289. With respect to waiver and estoppel the issue is not as

simple as formulated by the plaintiff. "'Waiver' is a vague term used for a great variety of purposes, good and bad, in the law. In any normal sense, however, it cannotes some kind of voluntary knowing relinquishment of a right". *Green* v. *United States,* 1957, 355 U.S. 184, 191. Whether there is an intent to waive is a question of fact. *Chatfield Co.* v. *O'Neill,* 1915, 89 Conn. 172, 175; *O'Loughlin* v. *Poli,* 1909, 82 Conn. 427, 436. It need not be express; it may be implied. *Lee* v. *Casualty Co.,* 1916, 90 Conn. 202, 206. Indeed, when the intent to waive, though not expressly found, is yet the necessary inference from the facts found, the intent may be inferred as a matter of law. *Grippo* v. *Davis,* 1918, 92 Conn. 693, 696. The allegations of this defense are sufficient to warrant the inference of waiver and therefore can be considered even in the absence of an express allegation. *Phoenix Mutual Life Insurance Co.* v. *Brenckman,* 1961, 148 Conn. 391, 395. As for estoppel, although it is generally stated that in order for the doctrine to apply the party must do or say something intended or calculated to induce another to believe in the existence of certain facts and to act upon that belief and the other party influenced thereby must actually change his position or do some act to his injury which he otherwise would not have done, *Pet Car Products, Inc.* v. *Barnett,* 1962, 150 Conn. 42, 53, it should not be overlooked that "the principal of estoppel . . . has its foundation in a wise and salutary policy. It is a means of repose. It promotes fair dealing. It cannot be made an instrument of wrong or oppression, and it often gives triumph to right and justice where nothing else known to our jurisprudence can, by its operation, secure those ends. Like the Statute of Limitations, it is a conservator, and without it society could not well go on". *Daniels* v. *Tierney,* 1880, 102 U.S. 415, 420. The present action must be examined in the context of the strike which spawned it and the injunction which preceded it. The question presented here is whether when the plaintiff sought an injunction against certain tortious conduct and when there-

after the parties entered into a certain stipulation with respect to the issuance of such injunction without a reservation of right to pursue an action for damages, the plaintiff has elected its course of action and is therefore estopped to pursue its claim for damages. It is clear that a party may claim damages in an injunction proceeding. *Roy* v. *Moore,* 1912, 85 Conn. 159, 161. Furthermore, a court of equity which has obtained jurisdiction of a controversy will retain jurisdiction for the purpose of administering complete relief in furtherance of justice concerning the subject matter. *Clipfel* v. *Kantrowitz,* 1956, 143 Conn. 184, 188. Since he who seeks equity must do equity the question may well be whether under the circumstances surrounding the labor dispute between the parties the court will permit the plaintiff to seek an injunction while at the same time holding in reserve its power play for damages. Without a full plenary hearing of all the circumstances surrounding the injunction and the stipulation entered into in connection therewith the court cannot hold as a matter of law that this defense is invalid.

The seventh special defense raises the defense of the one year statute of limitations under Section 52-584 of the General Statutes. It is the plaintiff's claim that the case at bar is governed by the three year statute. Section 52-577. The plaintiff's argument is two-fold; (1) that it is not seeking damages for injuries to real or personal property, (2) it is not seeking damages based on reckless or wanton misconduct. Since the second ground is dispositive of the present matter there is no need to consider the first ground; consideration of the first ground is best left to another day. As for the latter ground both counts of the substituted complaint claim damages flowing from intentional acts, not from reckless or wanton misconduct. Such acts are not covered by Section 52-584 which is limited to acts of neligence or of reckless and wanton misconduct. The intentional tort is governed by Section 52-577. *City of Milford* v. *Swarbrick,* 1963, 24 Conn. Sup. 320, 323.

Although the defendants have filed the same special defenses to the second count as to the first, the plaintiff's demurrer in this regard invites the Court to examine the whole record and to give judgment for the party who, on the whole, appears to be entitled to it. *White* v. *Avery,* 1908, 81 Conn. 325, 328; Stephenson, Conn. Civ. Proc. § 94c. Examining the second count of the substituted complaint in the light of these considerations it is apparent that this count alleges a cause of action for civil conspiracy. Our courts do not recognize an independent cause of action for conspiracy. *Benoit* v. *Amalgamated Local 299,* 1963, 150 Conn. 266, 276; *Wyeman* v. *Deady,* 1906, 79 Conn. 414, 417; *Austin* v. *Barrows,* 1874, 41 Conn. 287, 300. Thus the plaintiff gains nothing by repeating the allegations of the first count under a conspiracy label.

Accordingly the demurrer to the first, second, third and seventh special defenses to the first count is sustained, demurrer to the sixth special defense is overruled. The demurrer to the special defenses to the second count is overruled.

Memorandum of Decision on Plaintiff's Motion for Rehearing of Demurrer to First, Second, Third and Seventh Special Defenses to Second Count of Substituted Complaint

(Parskey, J.)

(March 31, 1966)

SUPERIOR COURT
HARTFORD COUNTY

No. 133884

UNITED AIRCRAFT CORPORATION, *Petitioner,*

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS: AERONAUTICAL INDUSTRIAL DISTRICT LODGE NO. 91, IAM; INDUSTRIAL AIRCRAFT LODGE 1746, IAM, *Respondent.*

No. 143885

UNITED AIRCRAFT CORPORATION, *Petitioner,*

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS: AERONAUTICAL INDUSTRIAL DISTRICT LODGE NO. 91, IAM; INDUSTRIAL AIRCRAFT LODGE 743, IAM, *Respondent.*

The Court has re-examined the second count of the complaint in the light of the arguments advanced by the plaintiff in the present motion.

While it is true, as the plaintiff claims, that generally an action does lie for damage resulting from tortious acts done pursuant to a conspiracy, *Williams* v. *Maislen,* 1933, 116

Conn. 433, 437, Section 31-114 of the General Statutes virtually eliminates this type of action in labor disputes. The plaintiff correctly points out that in a civil conspiracy a defendant co-conspirator is liable in damages for injury from acts of a co-conspirator pursuant to the conspiracy, *Ashmead* v. *Colby*, 1857, 26 Conn. 287, 314, but this is precisely what Section 31-114 prohibits. In *Benoit* v. *Amalgamated Local 299*, 1963, 150 Conn. 266, 274 our Supreme Court noted the similarity between Section 31-114 and Section 6 of the Norris-LaGuardia Act 47 Stat. 70 and further accepted the federal construction as announced in *United Brotherhood of Carpenters and Joiners* v. *United States*, 1946, 330 U.S. 395, 406, as applicable to our statute. In *United Brotherhood* at page 404, it is made abundantly clear that under Section 6 participants in a conspiracy are protected against liability for the unauthorized illegal acts of other participants in the conspiracy. Since this is the very heart of the civil conspiracy, once it is eliminated nothing of substance remains. While it is true that participants in a conspiracy are not immunized from responsibility for authorized acts in furtherance of a conspiracy, the plaintiff has already alleged in its first count tortious conduct authorized, ratified and participated in by the defendants; in view of the limitations of Section 31-114 repeating these allegations in the second count under a conspiracy label adds nothing.

Plaintiff's motion for rehearing is denied.

Memorandum of Decision

(Gaffney, J.)

(June 3, 1968)

SUPERIOR COURT
HARTFORD COUNTY

No. 133884

UNITED AIRCRAFT CORPORATION, *Petitioner*,

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS: AERONAUTICAL INDUSTRIAL DISTRICT LODGE NO. 91, IAM; INDUSTRIAL AIRCRAFT LODGE 1746, IAM, *Respondent*.

No. 133885

UNITED AIRCRAFT CORPORATION, *Petitioner*,

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS: AERONAUTICAL INDUSTRIAL DISTRICT LODGE NO. 91, IAM; INDUSTRIAL AIRCRAFT LODGE 743, IAM, *Respondent*.

By agreement of counsel both of the above-numbered cases were tried together. The issues in each were identical. Each complaint was drafted in two counts. Case No. 133884 was brought by the United Aircraft Corporation against the International Association of Machinists: Aeronautical Industrial District Lodge #91, International Association of Machinists: Industrial Aircraft Lodge #1746 of the International Association of Machinists. In case No. 133885 the United Aircraft brought suit against the same defendants with Local #743, International Association of Ma-

chinists being sued in place of Local #1746. Local Lodge #1746 was the lodge covering the aircraft plants at East Hartford and Manchester. Local Lodge #743 was the lodge operating at the Hamilton Standard Division of the plaintiff corporation located in Windsor Locks and Broad Brook, Connecticut. The plaintiff is a Deleware corporation with offices in East Hartford. The defendant International Association of Machinists is an unincorporated association, doing business, acting or carrying out its functions in this State. The defendant Aeronautical Industrial District Lodge #91, International Association of Machinists is an unincorporated voluntary association which had an office and place of business in East Hartford, during periods relevant to this action. The defendants, Local Lodges #1746 and #743 are and were unincorporated voluntary associations which had their offices in East Hartford during periods relevant to these actions. A collective bargaining agreement entered into between the plaintiff, hereinafter referred to as "Aircraft" and Lodge #1746 which had been entered into December 5, 1957, expired December 4, 1959. This agreement covered at the East Hartford Plant approximately 16,850 production and maintenance employees. The agreement between Aircraft and Lodge #743 entered into April 18, 1958, expired April 21, 1960. This agreement covered approximately 7,000 production and maintenance employees. Negotiations to effectuate new agreements between the parties were unsuccessful and a strike was called on June 8, 1960 against the Aircraft at both the East Hartford and Manchester divisions and the Windsor Locks and Broad Brook divisions. Aircraft alleges in the first count in each complaint that between June 8, 1960 and June 13, 1960 the defendants, by reason of a great many enumerated torts committed on the picket lines, unlawfully interfered with its business, as a result of which it was forced to expend large sums of money in increased costs of production; it was prevented from earning profits reasonably to be anticipated; it was prevented

from meeting its contractual obligations; it incurred expense for damage to property of its employees and others, and it was caused to spend substantial sums of money to protect its lawful interests. (This last claim was later abandoned after motion made by the defendants.)

The claimed torts included mass congregation of pickets on the sidewalks behaving in an unruly manner, mass picketing, circular picketing, close formation and shoulder-to-shoulder picketing, malicious and wilful blocking of ingress and egress to Aircraft's premises, the denying of access to Aircraft's premises to its officers, employees, deliverymen, and others desiring to enter and leave the premises for the purpose of conducting lawful business with Aircraft. The use of vile, obscene, abusive, vicious and threatening language and gestures directed by the pickets at these same officers, employees, suppliers, and members of the public entering, leaving or attempting to enter or leave Aircraft's premises is further alleged. These acts were claimed to have been undertaken in an attempt to coerce and intimidate these officers, employees and suppliers from entering or leaving Aircraft's premises. Damage and injury to Aircraft's officers and employees, suppliers and members of the public resulting therefrom are charged. It is further alleged that acts and threats of violence were directed against these same officers, employees and agents of Aircraft.

Aircraft on June 13, 1960 sought a Show Cause Order in Superior Court for Hartford County, asking why an injunction should not issue, restraining the defendants from the alleged tortious acts complained of. On this date a stipulation was entered into between the parties, approved by the Court (Klau, J.) wherein the defendants in each case agreed to wholly and absolutely desist from mass picketing, shoulder-to-shoulder picketing and close formation picketing conducted in such a way as to block ingress and egress at the entrances to the Aircraft's plants. The defendants

further stipulated that their members would refrain from "preventing or interfering by force, violence or intimidation", or "the deposit of nails or other sharp objects on the roadway, or the threat of force or violence to the entrance or egress from said plant of the plaintiff's officers, employees or members of the public". The defendants agreed to limit the number of its pickets at the entrances and to space the distance between its pickets.

The Aircraft claims that subsequent to the approval by the court of the stipulation, and the filing of it in court, the defendants, their officers, agents and members, continued to engage in the tortious acts and activities above described in violation of the stipulation, and that this course of conduct was carried on until the strike was settled on August 11, 1960.

In a second count in each of the two cases, the plaintiff claimed that the tortious and illegal acts alleged in the first count were done in pursuance of a conspiracy.

Compensatory damages in the sum of $10,000,000 are sought by Aircraft in suit No. 133884 against the International, the District Lodge #91, and Local Lodge #1746. Compensatory damages of $5,000,000 are sought by Aircraft in suit No. 133885, against the International, the District Lodge #91 and Local Lodge #743, in Windsor and Broad Brook. Additionally, in each case exemplary damages are sought in such sum as the court finds appropriate.

At the start of the trial counsel agreed and defendants' counsel moved that the issues on liability and damages be separated, and that the plaintiff would first proceed on the issue of liability. This motion was granted. The case was then tried to the court on the issue of liability alone, with an understanding between the parties that if after a full hearing, liability was found to rest upon the defendants, a later hearing in damages would be held.

Early in the trial the court ruled, after objection was made, that it would not hear evidence in support of the

conspiracy count. It ruled that, accurately speaking, there is no civil action of conspiracy under our law, but that such an action is an action for damages caused by acts committed pursuant to a formed conspiracy rather than by the conspiracy itself. See *Cole* v. *Associated Construction Co.*, 141 Conn. 49, 54; *Benoit* v. *Amalgamated, Local No. 299*, 150 Conn. 266, 276.

In each of the instant cases damages were not sought under the conspiracy count. This count, the plaintiff admitted, was designed to be used as a vehicle in each case to introduce evidence to support its claim for damages sought in the first count.

The defendants answered the complaint with admissions of certain paragraphs, including the claimed status of the defendants, and denials of other paragraphs. Additionally, they pleaded several special defenses. Chief reliance is placed on special defenses numbered 4 and 5. In substance these defenses allege that the defendants at no time ever authorized, ratified, or participated in any of the tortious acts set out in the complaint and consequently under the prohibitions of § 31-114 of our General Statutes they were not liable. A sixth special defense claims estoppel and waiver on the part of the Aircraft for its failure to apply to the Superior Court for a restraining order to stop the violations by the defendants of the terms of the stipulation agreed upon and approved by the court on June 15, 1960. This defense was not considered at the trial, since the court felt it pertained primarily to the question of damages.

During a late stage in the trial the defendants advanced a rather novel defense. After evidence had been introduced to show that they incited the mass and illegal picketing leading to the consequential acts of violence, they sought to escape the responsibility for their tortious acts, on the claim that conditions got so far out of hand on the picket lines that their officers and agents in charge were

unable to control the situation, and so should be excused from bearing any burden of guilt.

Although the complaints and answers in these cases are the same, it is necessary to consider each case separately because of the different nature of the overt acts proven in each case.

First consideration is given to the facts proven in case No. 133884, the Aircraft against International, District Lodge #91, and Local Lodge #1746.

Local Lodge #1746 encompassed a bargaining unit of approximately 16,000 hourly employees at the plaintiff's East Hartford plant. Its elected officers at the time of the strike were President Fraser, Vice President Stewart, Treasurer Harlow, Recording Secretary Kohler and Financial Secretary Danahy. In the plant there were elected shop stewards and shop committeemen, each of whom had specific duties to perform during grievance procedures. District #91 was an organization composed of local lodges of the International Association of Machinists and was immediately over the local lodges, being the constitutional administrative arm of the International. Delegates were elected to it by each local lodge of the district. They in turn elected district officers who administered the affairs of the district. District #91 was comprised of Lodges #1746 at East Hartford and #743 at Windsor Locks. The District exists under the constitution of the Grand Lodge, which is also known as the International. Both the local lodges and the district are affiliated with the International. The salaries of the representatives of the district were paid partially by the district and partially by the International or Grand Lodge. The senior business representatives of district #91 in 1960 was John R. Main. Other representatives at that time were George Cope representing Lodge #1746, and John R. Sullivan representing Lodge #743 at Hamilton Standard.

In 1960 Raymond Jutras, an International representative, was an official of district #91 acting as an organizer, being paid partially by the International, and in part by district #91.

Richard Thurer, a representative and agent of the International was assigned in 1960 as the I.A.M. representative to the plaintiff's plant. He was paid solely by the International.

The strike at the plaintiff's East Hartford plant began at 9:00 A.M. on June 8, 1960. Sanctions had originally been granted by the International to begin the strike on June 13 but Department #961 at East Hartford walked out prematurely June 8. The vice president of the International in charge of the New England region, Fred Coonley, immediately sent a telegram to local lodges #1746 and #743 granting sanctions retroactively as of 8:00 A.M. that morning. Later in the morning a mass meeting was held at Union Hall on Main Street in East Hartford. Portions of the events that transpired at this meeting were sound film recorded by W.T.I.C., a Hartford Radio and Television station. The meeting was addressed by Raymond Jutras, the International organizer. He read a telegram which had been sent to John Main, the business representative of district #91, by Fred H. Coonley, vice president of the International. It officially advised that strike sanctions were released to lodges #1746 and #743 as of 8:00 A.M. June 8, 1960. Jutras spoke as follows:

> "VOICE: Now it becomes our job to try to keep as many of the second shift employees from going into that plant as we possibly can and that can only be done by mass picketing. But, listen, Brothers and Sisters, we have been waiting for fifteen years for this. This company has shoved a substandard contract down our throats because they kept us divided. They have demonstrated it today that we will not go back to work until we have the kind of a contract that

we need with United Aircraft. If the officers gave you a hard time, don't argue with the officers. If they tell you to move over here or move over there, do so. Report the incident to us and it will be our responsibility to take it up with the East Hartford Police Department. Remember one thing, the cop has the last say. Don't argue with them. We don't want to see you boys wind up in the jug, but let me assure you of this, if you wind up in the jug, we'll get you out as fast as they bring you in, believe me."

During the following days and until the entry of a stipulation regulating activity on the picket lines, approved by the court on June 13, 1960, the strikers resorted to every kind of illegal picketing. Films taken by the plaintiff at each gate of its plant, show the pickets adopting extreme measures designed to halt all ingress and egress to the plaintiff's plant. Picketers by the hundreds marched in circular formation shoulder to shoulder. Cars trying to enter the plant were blocked off by masses of pickets. Police forcibly pushed picketers aside to open passageways for cars and trucks entering the premises. Drivers and occupants of cars were subjected to a variety of contemptuous gestures. Employees were physically attacked. Profanities and obscenities were shouted along with threats of physical harm. Strikers ostentatiously noted license numbers and occupants of the cars entering and leaving the plant and other strikers took pictures of the cars and occupants, all in an attempt to intimidate workers. Mirrors and radio antennas were torn off cars. The shoving, kicking, pushing and slapping of cars was commonplace. Hundreds of cars turned back. Law enforcement officers, both state and local, were shoved against and on the hoods of the cars. Traffic as a result was snarled and backed up for blocks. Numerous arrests were made. Nails, tacks and other sharp objects were strewn on the highway approaches. The general counsel of the International, Plato Papps, who had been summoned to Hartford the first week of the strike,

and who later testified in this trial as a defense witness, characterized the scene in his testimony after having viewed the movies taken by the plaintiff as follows:

"Q. Now, tell his Honor what did you see in those movies?

"A. A lot of mass picketing. I saw cars being rocked. I don't recall now whether I saw anybody get struck, your Honor, but there was a very wild, unruly mob, mass picketing. I think that's the vest way I can explain it. I think I commented at that time it looked like 'Ben Hur' in modern dress or in modern cars. That's about the sum and substance of it.

Q. All right. Now, following the showing to you of those movies, what if anything did you do next?

A. I looked at the movies. I knew there was going ot be an injunction the next day. I told Joe, I said—Joe Wells, that is—I said, 'Joe, I'm not going to let any court in the country see these movies.' I said, 'I'll take a consent judgment before I do that."

He further testified as follows concerning the picketing that he saw:

"Q. Now, tell his Honor, if you will, something of the procedure that was followed in the courthouse the next day when—were you in court when the case was called having to do with the application for injunction?

A. Oh, yes. I think Mr. Zeman—no, there was a Mr. Apter, Marvin Apter, who was representing Lodge 1746 at that time and Mr. Zeman was counsel for 743.

Q. All right.

A. If my memory is correct, and I told them what I had seen, the motion pictures. I said, 'I'm not going to permit any Court to see these pictures.' As far as I was concerned, any judge that saw them would issue an injunction immediately. I then talked to Mr. Wells. I was permitted—I think I said in open court—I believe I was permitted to—I was introduced to the

Court. I think we met in chambers, Judge Klau, if my memory is correct. I explained to the judge that we didn't condone this. That as far as I was concerned it was illegal activity, and that I was perfectly willing to enter into a stipulation and was quite concerned frankly with people who might be arrested, and I would—with the consent of Mr. Wells we agreed to a stipulation."

Every concept of peaceful and legal picketing was violated. In the case of *Levy & Devaney, Inc.* v. *International Pocketbook Workers Union,* 114 Conn. 319, at 322 the court held as follows:

> "To intimidate is to inspire with fear, to overawe or make afraid. Fear may be inspired without physical violence or spoken threats, moral intimidation may be accomplished by a menacing attitude and a display of force which may coerce the will as effectually as actual physical violence. The gathering of strikers in considerable numbers at the entrance of a factory with threatening attitude toward employees, who must run the gauntlet of a hostile picket line in going to and from work, may overawe and make them afraid by a show of force which itself is intimidating. The well considered authorities all hold that the conduct of a strike may be such as to constitute intimidation though there is no use of force or physical violence. *State* v. *Stockford,* 77 Conn. 227, 237, 58 Atl. 769; *Vegelahn* v. *Gunter,* 167 Mass. 92, 44 N.E. 1077; *Jefferson & Indiana Coal Co.* v. *Marks,* 287 Pa. 171, 134 Atl. 430; *Pierce* v. *Stablemen's Union,* 156 Cal. 70, 103 Pac. 324; *Keuffel & Esser* v. *International Assoc. of Machinists,* 93 N.J. Eq. 429, 116 Atl. 9; *Bomes* v. *Providence Local No. 223,* 51 R.I. 499, 155 Atl. 581; *Truax* v. *Corrigan,* 257 U.S. 312, 42 Sup. Ct. 124; 7 Labatt's Master & Servant, (2d Ed.) § 2706; 1 Eddy on Combinations, § 538; Cogley on Strikes & Lockouts, 292; 32 C.J. pp. 166, 182."

Judge Devlin in his comprehensive and studied opinion on picketing in *Turner & Seymour Mfg. Co.* v. *Torrington Foundry Workers Local 1699,* 18 Conn. Supp. 73 (1952) contrasted legal and illegal activities in the picket lines as follows:

> "In the furtherance of a lawful strike the strikers may use peaceful persuasion to induce other workmen to join them in the strike. Restatement, 4 Torts § 779, comment f, has tabulated some of the several functions performed by picketing in the following language: 'Pickets stationed at the place of business involved in the dispute may observe it to see the extent of operations and the persons who come there for business. They may also, by word of mouth, or signs or placards, seek to dissuade workers and others from entering the plant for purposes of business or from otherwise doing business with the employer. Their mere presence at the plant may be sufficient notice to persons interested that the plant is involved in a labor dispute. Picketing may also be a means of maintaining the morale of the workers involved in the dispute, and of exhibiting to others their unity and determination. Rumors that the workers' morale is weakening, that their ranks are suffering serious defections, and that the strike is being abandoned in favor of a return to work may bring defeat to the workers' cause and are sometimes circulated for that very purpose. Picketing may dispel such rumors.
>
> The term 'peaceful picketing' implies not only the absence of violence but the absence of any unlawful act. It authorizes picketing which does not interfere with the person or property of another by the unlawful use of force, violence, intimidation or threats. It precludes any form of physical obstruction or interference with an employer's business or the misrepresentation of the facts of the controversy, and should not go beyond the area of peaceful persuasion.

The boundary between lawful and unlawful conduct is that between peaceful persuasion and intimidation. The claim of the defendants that intimidation or coercion cannot be found to exist in the absence of actual physical violence or express threats of physical injury to person or property is not well founded and is not in accord with our law.

The legality of picketing in each case depends upon its purpose and the conduct of the pickets. Picketing becomes unlawful if it goes beyond the allowable area of peaceful persuasion and assumes the form of intimidation, threats or violence, impedes traffic to a place of business, or interferes with the free use of property. As to the number of pickets who may be employed in any particular picket line, there is no rule fixing the number at a definite figure. Each case must be judged upon its own particular set of facts. Restatement, 4 Torts § 799, comment h, summarizes the problem in the following language: 'The question is in each case whether the number of pickets plus the attendant circumstances are such that fear of physical harm rather than persuasion is the force loosed upon the persons sought to be influenced. Thus it is important to consider the kind of place picketed and the character of persons sought to be influenced, that is, for example, whether the place picketed is a foundry approached only by men or a department store patronized chiefly by women. It is important also to consider the character of the pickets, whether they are, for example, shy women or rough men. And it is important to consider the conduct of the pickets: whether they behave in a quiet, orderly manner or are boisterous and equipped with weapons of physical harm; whether they obstruct access to the place picketed so as to make ingress or egress difficult or do not interfere with it at all. Other factors may also be important, as, for example, the presence or absence of private guards or

public police and the extent of protection afforded by them. In some circumstances, then, picketing may be a form of peaceful persuasion, though the number of pickets is large; in others, the picketing may not be fair persuasion though the number is small.

Interference with a free right of ingress and egress to and from a plant by those who had such a right is unlawful. *American Steel Foundries* v. *Tri City Central Trades Council,* 257 U.S. 184. Mass and circular picketing is in the same category. *Goldfinger* v. *Feintuch,* 276 N.Y. 281, 286, 116 ALR 477. Likewise, the gathering of strikers in considerable numbers at the entrance of the factory with a threatening attitude towards employees who must run the gauntlet of a hostile picket line in going to and from work may overawe and make them afraid with a show of force which in itself is intimidating.' *Levy & Devaney, Inc.* v. *International Pocketbook Workers Union,* supra.

> In the present case, the conduct of the pickets in interfering with those having business with the plaintiff from entering the plant, in picketing in close formation and within circles, and in using offensive language or gestures amounting to intimidation exceeded the bounds of peaceful picketing, and such action was not 'awful' conduct within the meaning of the term in the statute."

The official publication of the I.A.M., The Machinist, in a front-page article in the July 7, 1960 issue, applauded the fact that pickets had lain across the tracks at an East Hartford railroad siding entrance to the plaintiff's plant and stopped a train from entering the plant.

The following officers of the International district # 91 and local # 1746 participated in these illegal activities: Richard Thurer, International representative of the Grand Lodge, Raymond Jutras, an International representative

and the business organizer of #91, and business representatives Robert Nelson and George Cope of district # 91. The local officers who participated were president David Fraser and vice president Stewart. The union stewards and committeemen of local # 1746 who participated were Jean Senecal, William Washington. Zora Fraser, wife of the president of local # 1746, Eleanor Murphy, Thomas Radevitch, Robert Wagner, Condon, Ritchie, Alice Muise, Bryzowy, James Mikelis, Robert Perkins, Grace Baker, Wally Jensen, Moody, Arthur Hepp, Paulson, Libby, Gorry, Stuart Pinchaud, Malley, Wittman, Gene Rippolone, Harry Amera, Gordon Sawyer, Vanderhoven, Malcolm Madison, Bernard McGuinness.

Senior business representative John Main was constantly at the scene observing and voicing no objection.

Following the entry of the stipulation in court June 13, 1960, the threats, acts of intimidation, harassment by phone calls, physical damage to cars and property of nonstrikers continued. From the time the strike started on June 8th until the end of the strike August 11th the personnel director of the plaintiff corporation at the East Hartford plant received in excess of 1,000 complaints concerning such activities, a majority of them being received after June 16th, a date subsequent to the entry of the stipulation.

At the start of the strike June 8th the Grand Lodge representative, Richard Thurer, assigned to district # 91, made a tour of the different gates leading to the aircraft's property and noted that the strike was getting out of hand. He immediately called general counsel Plato Papps in Washington, asking for legal help in anticipation of a restraining order being sought by the plaintiff. He then called the general vice president, Frederick Coonley, and asked for three other Grand Lodge representatives to be sent in to assist him in the handling of the strike. From June 8th on, conditions at the various gates worsened from day to day. The three Grand Lodge representatives who

were sent to East Hartford by vice president Coonley, were George Poulin, James Moore and Anthony Gilio. Moore was assigned by Thurer to the Hamilton Standard lodge # 743 at Windsor Locks. Poulin was kept in East Hartford working with Thurer until the strike was settled. Gilio having been called by Thurer was assigned to a Massachusetts plant in relief of Thurer at that plant.

The vice president of local # 1746 at the time of the strike was William Stewart. His activity in the affairs of local # 1746 began in 1955 when he became a steward, continuing as such until 1957 when he was elected to the shop committee. He continued as a shop committeeman until June of 1960. In the summer of 1959 he became vice president. In making preparation for the strike the Executive Board of # 1746 consisting of the president, vice president, secretary, treasurer, three trustees and nine or ten committeemen comprising the shop committee, named Stewart a vice charman of the strike policy committee. In attendance at this meeting of the Executive Board as advisors were Cope, Jutras and Main.

A strike fund had been set up in local # 1746 from dues collected over a period of years from union members. To be entitled to strike benefits from International, it was necessary for one to have been a member in the International for a minimum period of six months. Strike benefits were then paid to those strikers qualifying at the rate of $35 per week, starting the second week of the strike. To equalize benefit payments to those members of # 1746 lodge who did not qualify, not having been in the International for the required period, and who received but $15 weekly benefits from the local strike fund, Stewart set up and had sole charge of a collection box located on the stage of Union Headquarters where the benefits were paid by the International. An arrangement had been made with an armored car company for the cashing of all benefit checks at headquarters. Voluntary contributions to help those strikers not entitled to full benefits were dropped into the box by

many strikers receiving full benefits. The contributions for the first three weeks of the strike were turned over to the secretary and treasurer of local lodge # 1746. About $1,000 per week was collected in this manner. After the first three paydays, Stewart the vice president, began to withhold about $50 to $75 a week of the money collected. A portion of this sum was given to three strikers, McLaughlin, a union steward of # 1746, Potter and Ford. On three different occasions they received about $25 to $30 a week. The purpose of giving money to these men was to support their activities as "night riders". As such they damaged automobiles of nonstriking employees. They flooded the cellars of their houses, they burned their hedges, they threw paint bombs through their house windows. They tried to burn a barn behind a house where many nonstrikers lived. They burned one of the nonstriking employee's automobile. Poulin, the International representative, had full knowledge of the activities of these men and acted in conspiracy with them to further their aims. They reported to him what they did. Poulin instigated and encouraged these acts of violence. The reason for this was that as of the week of June 27th the strike had been going badly, more than 10,000 hourly workers having returned to work. Poulin directed Stewart to give money to these three night riders to aid and abet their criminal acts. About the seventh week of the strike Poulin and Potter approached Stewart and Poulin told Stewart that Potter had found a pellet gun and needed $26 to buy it. Poulin instructed Stewart to give Potter the money to buy it, which Stewart did and later advised Poulin that he had followed his instruction.

On August 4, 1961 Stewart voluntarily went to the East Hartford Police Department and gave information to the police concerning the acts of criminal violence committed by the trio of strikers, Potter, McLaughlin and Ford. He told the police that Poulin, Cope and Davis had been furnishing these men the names of those employees returning to work, the purpose being that McLaughlin, Potter and Ford would

harrass, intimidate and threaten the named workers or settle with them in some way or another. Stewart offered to testify in a court of law concerning these criminal activities. At that time he submitted to a lie-detector test. He signed a statement outlining these charges. This was witnessed by the chief of police and the captain of detectives of the East Hartford Police Department. A police investigation followed.

Cope is still employed by district # 91, lives in Hartford County, was available to take the witness stand to refute the testimony of Stewart but did not do so and made no appearance in court.

Poulin is still employed by the Grand Lodge International as a Grand Lodge representative, and is still paid by the International. He lives in Glastonbury, Hartford County, and was available to take the witness stand and refute the testimony of Stewart but did not do so and made no appearance in court.

The situation at the Hamilton Standard division of the plaintiff's corporation ran such a close parallel to the East Hartford Aircraft situation that it was clearly demonstrated that the unions at both these divisions were acting in concert. The strike was started the same day, June 8. Although the president of local # 743, Butler Seedman, testified that he alone was responsible for calling the strike at Hamilton Standard, his own later testimony belied this statement when he admitted that a prearranged telephone call to Union Headquarters in East Hartford was the signal for the strike to start at Hamilton Standard. This was not the only unbelievable portion of his testimony. Another part was when after first denying that in 1960 at the time of the strike he was a member of district # 91, he later, under examination by the court, admitted that he was. Hamilton Standard had a bargaining unit of about 4,000 hourly employees, sixty per cent of whom were members of local lodge # 743 of the I.A.M. In preparation for the

strike, originally scheduled for June 13, and for which sanctions had been granted by the International, twenty-five I.A.M. strike manuals containing instructions on how a striker should conduct himself, were distributed to the officers and the strike committee. In further anticipation of trouble on the picket lines, the strike committee screened the union members for picket duty in an effort to eliminate the hot heads who might generate the trouble. The absurd result of this effort was that a grand total of three union members out of 2,400 were forbidden to take their places on the picket lines. Two were assigned to parking cars and the third was assigned to work at headquarters.

The pre-arranged telephone call made by Seedman to Union Headquarters in East Hartford, was made at 9:55 A.M. June 8. Receiving word that the walkout had started in East Hartford, Seedman in turn called Ann DeFillipo at Broad Brook and the first shift employees of Hamilton Standard at both the Windsor Locks plant and the Broad Brook plant then walked out.

Immediately picket lines were established and a chaotic condition resulted. Hundreds of workers blocked the entrances to the plaintiff's plant. Cars and people were denied access. Threats were made by the picketers, and vituperative and obscene remarks were hurled at anyone seeking ingress to or egress from the plaintiff's property. The picketers became a wild and unruly mob, pummelling cars, tearing off antennas and mirrors from cars, using every means to intimidate those seeking legitimately to enter the plant. Cars seeking ingress had to turn back. Traffic was blocked for a distance of better than one-quarter of a mile. Alexander Latka, a committeeman and assistant chairman of the strike committee, using a bullhorn exhorted the strikers not to let the cars in. Committeewoman Ann DeFillipo, who was also on the strike committee, using a bullhorn, threatened and insulted those seeking to enter or leave the plaintiff's premises. Police had a difficult time making passageways for vehicles. Arrests were made. Ad-

mittedly the strike was out of control from the very moment Seedman, the president of the union, left the factory and tried to get out of the premises. In an attempt to bring order out of this chaotic condition, he admonished the pickets; told them what they were doing was illegal; and complained to the picket committee chairman and captains, ordering them to limit the number of pickets. According to his testimony all this proved fruitless. Thereafter he joined the ranks of the pickets on the illegal picket line himself. In a further attempt to restore order he complained about the situation on the picket lines being out of control to the business representative of the International, John R. Sullivan. Sullivan is the same individual who urged the strikers to picket in masses, and to block anyone from entering or leaving the plaintiff's property. Sullivan also participated in the illegal picketing. Seedman's and Sullivan's attempts to control the situation were spurious and insincere. Seedman's insincerity and duplicity was clearly demonstrated when at a later date the International chief counsel Plato Papps addressed the unions at Bushnell, seeking to end the strike. He at the time particularly noticed Seedman in the gallery laughing at him as he, Papps, was being booed down.

Besides Seedman. who was the president of # 743 and was also an officer of district # 91 being on the picket line participating in the illegal strike actions, the following officers, stewards and committeemen participated: Francis McCann, strike committeeman and chairman of the picket committee, William Merrigan, vice president of # 743, International representative John R. Sullivan, who was the business representative of district # 91, stewards Cosmos Briotta, Italo Pardi, who was also treasurer of # 743, Eugene Carter, Andrew Sidorsky, Edward Davis, Stephen Oski, Alexander Latka, Mitchael Piccin, Edward Butchelder, who was also a vice president of # 743, Alexander Cattoro, William Sander, who was a member of the negotiating committee, and Ann DeFillipo, committeewoman.

Two additional Grand Lodge representatives, James Moore and William Brenner, were at the Windsor Locks gate of the Hamilton Standard daily during the strike. The official newspaper of the I.A.M., The Machinist, in its front page article in the July 7, 1966 issue, applauded the fact that "Twenty girls pickets, on strike for the first time in their lives, refused to back down one inch for 14 brawny State Police at a United Aircraft plant in Broad Brook, Conn."

Seedman other than mildly reproving the picketers, complaining to Sullivan, and passing out the strike manuals, did nothing to remedy and end the mob scene and the illegal activities of the strikers. On the contrary along with Sullivan the International representative, Moore and Brenner the other International representatives, he took to the picket lines and participated in the strike. The other officers and agents of # 743 did the same.

This illegal activity on the picket lines ceased abruptly the moment the stipulation was agreed upon and approved by the court. Thereafter, however, hundreds of complaints of harassment were made to company officials. These included damage to personal property, autos, threats, obscenities and vituperations. The complaints continued until the end of the strike August 11, 1960.

Four defenses to these actions are relied upon by the defendants. The first is that without proof of damage resulting from the illegal acts the plaintiff asserts the defendants committed, the plaintiff lacks standing to sue. The short answer to this is that the defendants themselves at the initial stage of the trial proposed to separate the liability issue from the issue of damages and suggested that the cases proceed on a determination of liability first and then in the event liability was found to exist, to hold a separate hearing on damages. The plaintiff agreed to this. This agreement was approved by the court and it was read into the record at the start of the trial. It ill becomes the de-

fendants at the very end of the trial to attempt to reverse their position, a position which they themselves first brought about. This attempted reversal is rejected.

A second claim is that the suit is barred by the one-year statute of limitations. The section invoked to support this claim is Sec. 52-589 of our General Statutes, Revision of 1958. This section deals with suits based on negligence and reckless misconduct. The plaintiff brought suit, however, under Section 52-577. This provides "No action founded upon a tort shall be brought but within three years from the date of the act or omission complained of. (1949 Rev. § 8316). Obviously this is the statute that controls, not the negligence statute. The torts that were committed were definitely intentional. This claim of the defendants has no merit whatsoever.

The third defense is that the strike situation got out of control and therefore the defendants should be excused from responsibility for whatever happened thereafter. If this claim has merit, it is the complete answer to all the problems confronting labor unions during violent strikes, for a claim of losing control would exculpate the unions and their officers from any and all wrongs that ensued.

The case of "*The United Mine Workers of America* v. *Gibbs,* 383 U.S. 715," the governing case involving jurisdiction of state courts in labor disputes, is relied on to support this claim. This 1965 case defined the proof requirements under Section 6 of the Norris-LaGuardia Act. Additionally it dealt with the standards of agency required under Sec. 303 of the Labor Management Relations Act as compared with Sec. 6 of the Norris-LaGuardia Act in which section the words "clear proof" are found. In reviewing the legislative history of the Labor Management Relations Act passed by Congress subsequent to the Supreme Court's decision in the case of "*Brotherhood of Carpenters* v. *U.S.,* 330 U.S. 395" it ruled that the more stringent requirement of proof found in Sec. 6 of the Norris LaGuardia Act, to

wit, "clear proof" was not repealed. The court commented as follows:

> "Shortly thereafter, Congress passed the Labor Management Relations Act, which expressly provides that for the purposes of that statute, including § 303, the responsibility of a union for the acts of its members and officers is to be measured by reference to ordinary doctrines of agency, rather than the more stringent standards of § 6. Yet although the legislative history indicates that Congress was well aware of the Carpenters decision, it did not repeal § 6 outright, but left it applicable to cases not arising under the new Act. This selectivity is not surprising, for on state claims, though not on § 303 claims, punitive damages may be recovered. The driving force behind § 6 and the opposition to § 303, even in its limited form, was the fear that unions might be destroyed if they could be held liable for damage done by acts beyond their practical control. Plainly, § 6 applies to federal court adjudications of state tort claims arising out of labor disputes, whether or not they are associated with claims under § 303 to which the section does not apply.
>
> Although the statute does not define 'clear proof,' its history and rationale suggest that Congress meant at least to signify a meaning like that commonly accorded such similar phrases as 'clear, unequivocal, and convincing proof.' Under this standard, the plaintiff in a civil case it not required to satisfy the criminal standard of reasonable doubt on the issue of participation, authorization or ratification; neither may he prevail by meeting the ordinary civil burden of persuasion. He is required to persuade by a substantial margin, to come forward with 'more than a bare preponderance of the evidence to prevail.' *Schneiderman* v. *United States,* 320 U.S. 118, 125. In our view, that burden was not met."

The defendants here have taken out of this context the phrase "unions might be destroyed if they could be held liable for damage done by acts beyond their practical control," distorting the meaning of the phrase, and fallaciously arguing that this was the decision of the Supreme Court in that case. This phrase was included merely by way of legislative review and was not in any way the decision of the court in this case.

Reference might be made at this point, however, to the minuscule attempts made by the defendants here to bring order out of the chaotic strike situation they engendered. They mildly admonished those engaged in illegal picketing. They passed out pamphlets, containing instructions as to how to behave on the picket line (25 in all), they screened those known to be hot heads (3) and assigned them to other duties. That these feeble efforts would prove totally inadequate was a foregone conclusion and must have been known to the defendants.

The parent union all this while had in its hands the weapons to brink a quick halt to the chaotic conditions in (1) the firing or recall of agents for activities detrimental to the organization; (2) the revocation of sanctions, and (3) in the event the local got completely out of control, as was the situation here, the International could have taken over the local under a trusteeship, an action permitted under the Landrum-Griffin Act, and a procedure written into the constitution of the International. None of these remedial methods was resorted to. The court rejects this defense.

The final defense is that the defendants under Sec. 31-114 enjoy complete immunity from this action. Sec. 31-114 reads as follows:

> "No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court for the unlawful acts of individual officers, members or agents, except upon

proof of actual participation in, or actual authorization of, such acts, or ratification of such acts after actual knowledge thereof." (1949 Rev., § 7410)

It is patterned after Sec. 6 of the Norris-LaGuardia Act, the difference being that under the Norris-LaGuardia Act the phrase reads "upon *clear* proof" as distinguished from our statute which merely requires proof.

The statute was interpreted by our own Supreme Court in the case of *Benoit* v. *Amalgamated Local 299*, 150 Conn. 266. In this case the suit was brought against the union, the union's International organizer individually, and another member of the union. The court stated at p. 273:

> "We have not heretofore been called on to apply the language of 331-114 in circumstances such as the present. Under the statute, liability could not be imposed on the union for the unlawful acts of its individual officers, members or agents except on proof of (1) actual participation in, (2) actual authorization of, or (3) ratification of those acts by the union. The union could act only through the instrumentality of individuals. The court, in its judgment, absolved Kaplan and Ciccolallo, the only individual defendants remaining before it, from any liability for their actions in the picket line, and based the union's liability for what occurred solely on the grounds of authorization and ratification. The element of participation by the union in any activity at the gate is, therefore, not involved in the case before us."

Therein the *Benoit* case differs from the instant case. In this case participation is the ground on which these defendants are to be held responsible. It would be naive indeed to expect that a union will go on record authorizing illegal activities before they take place or ratifying the same activities after they took place. However, there still is some proof of authorization in this case, although it is in-

sufficient to sustain the burden required. It appears in the previously mentioned statements of Jutras and Sullivan.

Section 31-114 provides almost complete immunity to unions and their officers. The question of what constitutes participation sufficient to hold a union responsible has not as yet been decided by either our state Supreme Court or by the United States Supreme Court. Participation was considered by the United States Supreme Court in the *Union Workers* v. *Gibbs* case (supra) but the proof there of factual participation on the part of the union through the activity of its field representative was found lacking. The court found in that case that at the time of the troubles on August 15 and 16, 1966 no representative of the U.M.W., their International union, was present. It further found that the field representative of the union for the area was away attending an executive board meeting and did not return until later in the day on the 16th. He first learned of the violence while at the executive meeting. He returned with explicit instructions from his International union superiors to establish a limited picket line, to prevent any further violence, and to see to it that the strike did not spread to the neighboring mines. There was no further violence at the mine site. The picket line was maintained there for nine months. This situation contrasts sharply with the activities of the defendants in this case. There the court was faced with total absence of proof of participation by the defendants. Here there is a plenitude of proof of participation.

The Court there stated at p. 732:

> "In the present case, petitioner concedes that violence which would justify application of the state tort law within these narrow bounds occurred during the first two days of the strike."

During these two days, as noted above, no representative of the International was present, the field representative

returning late on the second day and ending the violence and the illegal picketing.

The Court held, at p. 735:

> "Petitioner vigorously contends that § 6 applied to the state claims in this case; that, on this record, it cannot be charged with having participated in or authorized the violence of August 15-16; and that it acts once it learned of the violence fell short of what would be necessary to show either ratification of the violence or any intent to build its picketing campaign upon the fears the violence engendered. We agree."

It further held, on p. 735:

> "At the outset, it is clear that the requisite showing was not made as to possible union authorization of or participation in the violence of August 15 and 16. Although it is undoubtedly true that the officers and members of Local 5881 were present in force at the mine site on those days, neither the Local nor they are parties to this suit. Mr. Gilbert, the UMW representative, had left the area for a business meeting before the series of events culminating in the violence and immediately upon his return, the violence subsided."

And again on p. 739:

> "What is required is proof, either that the union approved the violence which occurred, or that it participated actively or by knowing tolerance in further acts which were in themselves actionable under state law or intentionally drew upon the previous violence for their force.
>
> The record here is persuasive that the petitioner did what it could to stop or curtail the violence. There was repeated and uncontradicted testimony that when news of the violence reached the meeting that Gilbert was attending, he was given firm instructions to return to the scene, to assume control of the strike, to suppress violence, to limit the size of the picket line, and to assure that no other area mines were affected."

The *Gibbs* case is readily to be distinguished from this case where so many agents and officers of the defendant participated in so many of the illegal activities and so many acts of violence.

If a union is not to be held responsible for the tortious acts of its officers and agents, then § 6 of the Norris-LaGuardia Act and § 31-114 of the General Statutes are meaningless and both Congress and our legislature have indulged in labored acts of futility. Only the super credulous would believe that a union would go on record authorizing illegal activities and violence or ratify the same after they occur. If these defendants are not to be found responsible on the clear proof of the participation of their officers and agents in legal acts, and are on the contrary entitled to a total exemption of responsibility from all such acts, then the statute has no place in our laws and should be removed from the statute books.

The defendants are found liable to answer in damages for the tortious acts committed during the strike.

Memorandum of Decision on Hearing in Damages

(Gaffney, J.)

(November 26, 1968)

SUPERIOR COURT
HARTFORD COUNTY

No. 133884

UNITED AIRCRAFT CORPORATION, *Petitioner,*

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS: AERONAUTICAL INDUSTRIAL DISTRICT LODGE NO. 91, IAM; INDUSTRIAL AIRCRAFT LODGE 1746, IAM, *Respondent.*

No. 133885

UNITED AIRCRAFT CORPORATION, *Petitioner,*

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS: AERONAUTICAL INDUSTRIAL DISTRICT LODGE NO. 91, IAM; INDUSTRIAL AIRCRAFT LODGE 743, IAM, *Respondent.*

Memorandum of Decision on Hearing in Damages

This court in a decision dated May 31, 1968 found the liability issues in favor of the plaintiff and ordered a hearing in damages to proceed. The plaintiff opened this hearing by calling as witnesses 190 employees from the Pratt & Whitney Division of the plaintiff and 23 employees from the Hamilton Standard Division. With very few exceptions, they absented themselves from work because they were afraid to return. They had seen, heard about,

read about, or experienced the violence of the picket lines. The stipulation between the parties to this suit limiting the number of pickets in no way brought an end to the harassment and intimidation of the workers. Many of these were plagued by threatening phone calls. Others suffered property damage to home and cars. The threats and acts of intimidation created a situation in which employees who wanted to return to their jobs, did not report because they were fearful of consequences. Through the testimony of these witnesses, a clear pattern of lost work days directly and proximately attributable to the illegal acts of the defendants was established. The plaintiff offered to produce approximately one thousand additional employees, all of whom had already been interviewed. A great majority of these, in an offer of proof made by the plaintiff's counsel, would have testified that they desired to return to work but were apprehensive about doing this. The court deemed it unnecessary to have these witnesses appear.

The plaintiff introduced Herbert R. Northrup, an industrial relations consultant with a long and impressive background in the labor relations field. As professor and chairman of the Department of Industry of the Wharton School of Finance and Commerce of the University of Pennsylvania, a text writer, a consultant in labor economics and industrial relations, he qualified as an expert in the field. He had read the transcript, the briefs and court's decision in this case. He had studied the exhibits and viewed the motion pictures. The court has given credence to his testimony. Absent the violence, the strike at the Pratt & Whitney Division would not have lasted beyond three weeks, and the strike at the Hamilton Standard, where a much stronger union existed, would not have extended beyond four to six weeks. At the end of the three-week period at Pratt & Whitney, fear was the reason fifty per cent of the employees did not report for work. This percentage diminished gradually so that by the end of

July, 1960, twenty-five to thirty-three and one-third per cent of these employees were still out of work for fear of their own safety. At Hamilton Standard by the end of the strike, twenty per cent of the work force failed to report for the same reason.

Charles B. Preston, Comptroller of the plaintiff company, testified, from a formula which he devised, to the damages incurred by the plaintiff during the strike period at both Pratt & Whitney and Hamilton Standard Divisions. (Plaintiff's Exs. F and J). The logic and the mathematical correctness of the formula was supported by Mr. Wyman G. Patton, a C.P.A. and a partner in Price Waterhouse & Co. with twenty years' familiarity with the plaintiff's standard cost accounting system. Support for the Preston formula was also given by the principal defense expert in cost accounting, James Bassage, who testified that the fromula was fair, acceptable, and proper in comparing excessive costs in one period with another. He characterized it as being a very ingenious and competent job. The foundation stone of the formula is the number of man days lost attributable to the acts of the defendants during the strike. From this arises the claimed excess of manufacturing costs and the loss due to overhead and other expenses borne by the plaintiff without reimbursing compensation. The losses at each of these two plants were predicated on these two elements, which, when transposed into dollars and added together, constituted the Company's loss. The first consisted of a comparison of increased costs in the strike period in certain categories, as compared with the standard direct labor manufacturing costs under normal operation during the same period. The increases were noted in the following categories: labor efficiency variance, overtime premiums, corrective work, spoiled work; training, and at Hamilton Standard, in lieu of training, make-or-buy conversions. The claimed increases in the excessive manufacturing costs at Pratt & Whitney amounted to $1,208,352 for the period of the

strike. The second was a compilation of the increase in overhead and other expenses, called "overhead burdens", allocable to the reduction of the level of manufacturing operations during the strike period at Pratt & Whitney. The increased costs in overhead burdens were claimed to be $7,171,632. The combined total of the two was $8,379,984, from which is subtracted a portion attributable to man days lost during the strike at the North Haven plant of the plaintiff (where no claim of strike violence is made) in the amount of $2,371,535, leaving a total damage claim of $6,008,449.

At Hamilton Standard the claimed cost under the first element (excessive manufacturing costs incurred during the strike period) was $205,017. The second element (overhead burdens) was $2,233,203. The total of the two was $2,438,220.

The defendants quarrel only with the formula for both Pratt & Whitney and Hamilton Standard in regard to the failure of the plaintiff to shred out the categories making up the total excessive manufacturing costs in greater detail and with the increased costs charged to overhead burdens and not the formula itself.

Losses directly and proximately caused by illegal strike activities are proper elements of damage. See *Overnite Transportation* v. *Teamsters*, 257 N.C. 18 (other citations). As held in *United Electrical, R. & M. Workers* v. *Oliver Corp.*, 205 .F.2d 376, 387 (8th Cir. 1953): "When productive labor in a plant is reduced for any period to less than the normal, the company sustains a loss in the expenditure of necessary overhead for which it receives no production." For another similar example see *Steelworkers* v. *CCI Corp.*, 395 F.2d 529 (10th Cir. 1968); also *Local Union 984, Int. Bro. of Teamsters, etc.* v. *Humko Co.*, 313 F.2d 869.

The Connecticut Supreme Court allows damages for losses resulting from additional costs brought about by

reason of injuries received. *Ball* v. *Pardy Const. Co.*, 108 Conn. 549, 551; *Moiger* v. *Conn. Ice Cream Co.*, 146 Conn. 551, 554.

The fact that an exact determination of damages cannot be made with certainty does not bar or preclude an ascertainment of the damages. What is required is a reasonable basis for a reasoned conclusion.

> "Where a defendant has by his wrongful conduct made the calculation of damages difficult, he will not be heard to urge such difficulty as a reason for not assessing by approximation. *Eastman Kodak Co.* v. *Southern Photo Materials Co.*, 273 U.S. 359, 378, 47 S.Ct. 400, 71 L.Ed. 684. Although applied to a different set of facts, what we said in *Ball* v. *Pardy Construction Co.*, 108 Conn. 549, 551, 143 A. 855, is applicable here: "From the very nature of the situation, the amount of loss cannot be proved with exactitude and all that can be required is that the evidence, with such certainty as the nature of the particular case may permit, lay a foundation which will enable the trier to make a fair and reasonable estimate . . . . Mere difficulty in the assessment of damages is not a sufficient reason for refusing them where the right to them has been established.' . . . " *Crowell* v. *Palmer,* 134 Conn. 502, 511.

This rule is in direct line with the federal authorities cited above.

The strike ended August 11, 1960. The plaintiff is not entitled to claim, as it does in its formula, the entire number of work days lost during the strike (based as it is on a normal 5-day work week) because it concedes that at Pratt & Whitney the strike under normal non-violent conditions would have lasted three weeks and at Hamilton Standard under normal non-violent conditions the strike would have

extended four to six weeks. No claim, therefore, is allowed for any manpower shortage by reason of fear of reporting during the three-week period at Pratt & Whitney and the four to six-week period at Hamilton Standard. Any work stoppage during these workdays would have been due to a lawful strike. The court does not accept the theory that the calling of the strike in the first instance was an illegal act, and that the defendants should pay all damages accruing to the plaintiff for the entire duration of the strike as a consequence thereof. The elimination of the three-week period (15 workdays) at Pratt & Whitney reduces the number of man days during which a portion of the labor force failed to report from 37 to 22. During these days the excessive manufacturing costs and the overhead burdens apply. During these same 22 days, which extended from late June to July 29, many workers overcame their apprehensions about their personal safety and returned to their jobs. In late June, fifty per cent of those still not reporting did not do so because they were afraid to report. By July 29, however, this percentage had diminished from 33⅓ to 25%.

The plaintiff's claimed loss of $6,008,449 is based on the excessive manufacturing costs plus the overhead burdens for the full strike period on a one hundred per cent claim of work loss for all employees not reporting for work except those who were hard core union members and sympathizers.

The court adopts the elements of the plaintiff's formula but arrives at a finding of damages in the following manner: The total claimed damages in the amount of $6,008,449 is divided by 37, the total number of claimed man days lost. This results in a per diem man day loss to the plaintiff of $162,391. This per diem rate is then multiplied by twenty-two days [the 15 days, or three-week period having been eliminated] during which the loss of manpower due to the

illegal activities and the resultant fear of employees to return to their jobs can be charged. This result is $3,572,602. During these days, which extended from late June to July 29, there was at the start, a fifty per cent deficiency in the work complement ascribable to fear, diminishing daily until at the end of July (the first two weeks in August being the normal annual vacation period) there was a work deficiency of from thirty-three and one-third per cent to twenty-five per cent. Taking the twenty-five per cent figure and striking a mean between this percentage and the fifty per cent percentage gives a mean percentage of thirty-seven and one-half per cent. This percentage is then taken of the sum total of the 22 days multiplied by the per diem rate of $162,391. The damages then found to be due to the illegal acts of the defendants are $1,369,725.25. (See appendix.)

In the case of Hamilton Standard the same method of computation is used. The claimed damages of $2,438,220 is divided by the 33 man days lost to determine a per diem loss of $73,885. At Hamilton Standard the six-week period estimated for normal strike would have ended July 29. Any claim of reduced manpower is limited to the 6 working days in August. (The annual vacation at this plant occurs the last two weeks of July.) Multiplying the per diem rate by 6 and taking twenty per cent of this amount leaves a finding of damages at Hamilton Standard in the amount of $88,662 as a result of the illegal strike activities. (See appendix.)

At no time from the period of the strike to the institution of these lawsuits or at any later date did the plaintiff waive its claims for damages nor condone the acts of the defendants, nor did the plaintiff use these lawsuits for bargaining purposes to induce the defendants to withdraw their claims in their action in the United States District Court.

The plaintiff, Pratt & Whitney, is entitled to damages in the sum of $1,369,725.25 with interest from August 12, 1960.

The plaintiff, Hamilton Standard, is entitled to damages in the sum of $88,662 with interest from August 12, 1960.

The conduct of the defendants, comprising as it did wanton and violent acts, bringing injury to the plaintiff, justifies an award of exemplary or punitive damages. *Triangle Sheet Metal Works, Inc.* v. *Silver,* 154 Conn. 116, 128.

The following expenses of litigation are allowed:

Wiggin & Dana	$160,000
Wells	9,500
Costs of investigation	20,000
Witnesses	12,000
Accounting	20,000
Personnel Expenses	60,500
Price Waterhouse & Co.	5,000
Preparation	4,000
Showing of films	5,000

Two-thirds of these exemplary damages are to be applied to case No. 133884, Pratt & Whitney; and one-third are to be applied to case No. 133885, Hamilton Standard.

Judgment may enter in accordance with the above.

APPENDIX (to Memorandum Decision)

FORMULA

PRATT & WHITNEY DIVISION

37 total man days	$162,391	(per diem man day loss		(per diem man		
lost during strike 37)	$6,008,449	(claimed loss)	$162,391	day loss	$3,572,602	
			x 22	(number of days lessened work force due to strike after 15 work days of a normal elimination of	x 37½%	(mean percentage of workers absent due to fear of returning.)
			$3,572,602	strike period.)	$1,369,725.25	DAMAGES

HAMILTON STANDARD DIVISION

33 total man days	$73,885	(per diem man day loss)		(per diem man		
lost during strike 33)	$2,438,220	(claimed loss)	$ 73,885	day loss)	$ 443,310	(percentage of
			x 6	(number of days lessened work force due to strike after normal strike	x 20%	workers absent due to fear of returning.)
			$ 443,310	period.)	$ 88,662	DAMAGES

UNITED AIRCRAFT CORPORATION

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS ET AL.

(two cases)

Actions to recover damages for losses resulting from tortious conduct and wilful and malicious acts during a strike, brought to the Superior Court in Hartford County and tried to the court, *Gaffney, J.*; judgments awarding the plaintiff compensatory and exemplary damages and appeal by the defendants and by the plaintiff. *Error in part; new trial.*

Norman Zolot and, of the District of Columbia bar, *Mozart G. Ratner*, for the appellants (defendants) in each case.

John D. r'assett, with whom was *S. Robert Jelley*, for the appellee (plaintiff) in each case.

ALCORN, C. J. We are confronted with two appeals by the defendants from judgments awarding damages to the plaintiff in two cases which were tried together. The appeals have been consolidated for presentation to this court. In each action the plaintiff sought the recovery of both compensatory and exemplary damages from the defendants jointly and severally based upon allegedly tortious acts committed in the course of an illegal strike. As the cases have been presented in the trial court and here, four different defendants representing three different union organizational levels are involved. One case relates to a strike which took place at the plaintiff's Pratt & Whitney Divi-

sion factories in East Hartford and Manchester, Connecticut. The other case relates to a simultaneous strike at the plaintiff's Hamilton Standard Division factories in Windsor Locks and Broad Brook, Connecticut. The top level of union organization involved is the defendant International Association of Machinists, hereinafter referred to as International. The next in union jurisdictional authority under International is the defendant Aeronautical Industrial District Lodge No. 91, hereinafter referred to as District 91. International and District 91 are defendants in both cases. At the bottom of International's union organization are the defendant Industrial Aircraft Lodge 1746 of the International Association of Machinists, hereinafter called Lodge 1746, and Industrial Aircraft Lodge 743 of the International Association of Machinists, hereinafter called Lodge 743. Members of Lodge 1746 were employed at the plaintiff's East Hartford and Manchester factories and Lodge 1746 was a defendant, along with International and District 91, in the action involving the strike at those plants. Members of Lodge 743 were employed at the plantiff's Windsor Locks and Broad Brook factories and Lodge 743 was a defendant, along with International and District 91, in the action involving the strike at those plants.

The defendants in each case filed identical pleas in abatement attacking the court's jurisdiction; the plaintiff demurred, and the court sustained the demurrers. The defendants in each case filed identical demurrers to the relief sought and the demurrers were overruled. The issues raised by these pleadings require no individual discussion because they are encompassed within the principal issues on this appeal. Following other preliminary pleading the issues were closed, trial was had first on the issue of liability and, subsequently, on the issue of damages. Judgment was rendered on November 26, 1968, that the plaintiff recover, in the case involving the strike in East Hartford and Manchester, damages of $1,369,725.25 with interest from August 12, 1960, exemplary damages of $197,333.33

and costs of $739.90; and, in the case involving the strike at Windsor Locks and Broad Brook, damages of $88,662 with interest from August 12, 1960, exemplary damages of $98,666.67 and costs of $241.70.

The court's finding, embraced in 866 numbered paragraphs covering 247 printed pages of the record is the subject of a massive attack by the defendants. It would prolong this opinion beyond all reason to discuss the errors assigned in the finding. Suffice it to say that they have been carefully examined and that no correction which would have a material bearing on the decisive issues is required.

The plaintiff has filed a cross appeal in which it too assigns error in the finding and also in the court's failure to find that the defendants authorized, participated in and ratified the acts complained of, and in its finding and award of damages. Here again the claims concerning the finding have been carefully examined and no correction which would have a material bearing on the decisive issues is found to be required. As in the case of the appeal, the claims of law and fact made in the cross appeal are disposed of in the ensuing discussion of the essential dispute between the parties.

The real issue raised by the appeal are: (1) whether the trial court had jurisdiction of the controversy, (2) whether the trial court erred in imposing liability on the defendants, and (3) whether the trial court erred in assessing damages. We will discuss those issues in that order.

I

Based on the doctrine of federal preemption, the defendants assign error in the court's refusal to dismiss both actions on jurisdictional grounds. There is no denying the fact that the jurisdiction of the state courts over labor disputes has been greatly restricted by the passage of the Labor Management Relations Act, 1947, and the establishment of the Labor Management Relations Board. The

complaints in these actions alleged in substance, however, that, while the plaintiff was negotiating collective bargaining agreements with Lodge 1746 and Lodge 743, all of the defendants joined in concerted and unlawful mass picketing, personal violence, invective and intimidation with the wilful and malicious purpose of coercing and preventing persons from entering the plaintiff's premises as a result of which the plaintiff suffered severe financial damage. It is well established that state courts have jurisdiction over such tort actions. *United Mine Workers* v. *Gibbs,* 383 U.S. 715, 721, 729, 86 S. Ct. 1130, 16 L. Ed. 2d 218; *San Diego Building Trades Council* v. *Garmon,* 359 U.S. 236, 247, 79 S. Ct. 773, 3 L. Ed. 2d 775; *United Automobile Workers* v. *Russell,* 356 U.S. 634, 635, 646, 78 S. Ct. 932, 2 L. Ed. 2d 1030; *United Construction Workers* v. *Laburnum Construction Corporation,* 347 U.S. 656, 657, 74 S. Ct. 833, 98 L. Ed. 1025. The claim of the defendants that the court lacked jurisdiction is without merit.

The defendants also attacked the court's jurisdiction on the ground that "federal law prohibits employers from using state court damage suits, predicated on strike misconduct, as 'weapons of economic coercion' ", relying on an observation made in *Linn* v. *United Plant Guard Workers,* 383 U.S. 53, 64, 86 S. Ct. 657, 15 L. Ed. 2d 582. The assertion of the accepted right to bring a state court action for damages arising from tortious conduct, as in the present cases, does not come within the ambit of the proposition stated even if the case relied on supported it.

The defendants' claims that the actions are barred by waiver, estoppel and condonation are completely without merit and do not require discussion.

II

We turn, then to the question of the correctness of the trial court's conclusion that liability could properly be imposed on the defendants for the tortious acts complained of. Since these acts occurred in the course of a labor

dispute, § 31-114 of the General Statutes becomes pertinent. The statute is printed in the footnote.[1] That statute, in substance, provides that liability cannot be imposed on organizations such as the defendants, participating or interested in a labor dispute, for the unlawful acts of its individual officers, members or agents except upon proof of (1) actual participation in, (2) actual authorization of, or (3) ratification of those acts by the defendants.

The plaintiff invokes the doctrine of respondeat superior under the common law of agency. Its argument is, in the first place, that, assuming that § 31-114 applies to cases such as the present, the statute did not do away with the common-law rules of agency and, secondly, in effect, that common-law rules of agency apply in these cases because § 31-114 does not apply.

There is no legislative history available to aid us in determining the extent to which, if at all, the General Assembly intended § 31-114 to displace the rules of agency in the case of labor unions involved in labor disputes. In *Benoit* v. *Amalgamated Local 299,* 150 Conn. 266, 274, 188 A.2d 499, however, we said that the language of § 31-114 is so similar to the language of § 6, of the Norris-LaGuardia Act (47 Stat. 71, § 6, 29 U.S.C. § 106)[2] that the construction

[1] "Sec. 31-114. RESPONSIBILITY FOR UNLAWFUL ACTS. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court for the unlawful acts of individual officers, members or agents, except upon proof of actual participation in, or actual authorization of, such acts, or ratification of such acts after actual knowledge thereof."

[2] "[47 Stat. 71, § 6, 29 U.S.C. § 106] No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof."

placed upon the latter by the United States Supreme Court is particularly pertinent in our construction of § 31-114.

We are persuaded by the reasoning and conclusions in cases construing § 6 of the Norris-LaGuardia Act that the liability of these defendants is to be determined by the application of § 31-114 of our General Statutes and that the common-law rules of agency are pertinent to § 31-114 only as an aid to determining actual participation in, actual authorization of, or ratification of the acts complained of. In other words, we believe that while a labor union which could properly be held to be liable under § 31-114 would probably also be liable under agency principles, nevertheless liability under common-law agency rules would not necessarily create liability under § 31-114.

The legislative history of § 6 of the Norris-LaGuardia Act, which we consider as somewhat of a twin to our own § 31-114, was reviewed in *United Brotherhood of Carpenters v. United States,* 330 U.S. 395, 67 S. Ct. 775, 91 L. Ed. 973. In that case the court said (p. 403): "We need not determine whether § 6 [of the Norris-LaGuardia Act] should be called a rule of evidence or one that changes the substantive law of agency. We hold that its purpose and effect was to relieve organizatioins, whether of labor or capital, and members of those organizations from liability for damages or imputation of guilt for lawless acts done in labor disputes by some individual officers or members of the organization, without clear proof that the organization or member charged with responsibility for the offense actually participated, gave prior authorization, or ratified such acts after actual knowledge of their perpetration." The court went on to state (p. 406): "We hold, therefore, that 'authorization' as used in § 6 means something different from corporate criminal responsibility for the acts of officers and agents in the course or scope of employment. We are of the opinion that the requirement of 'authorization' restricts the responsibility or liability in labor disputes of employer or employee associations, organizations or their members for unlawful acts of the officers or members of those associations or organizations, although such officers or members are acting within the scope of their general authority as such officers or members, to those associations, organizations or their officers or members who actually participate in the unlawful acts, except upon clear proof that the particular act charged, or acts generally of that type and quality, had been expressly authorized, or necessarily followed from a granted authority, by the association or non-participating member sought to be charged or was subsequently ratified by such association, organization or member after actual knowledge of its occurrence."

Congress thereafter enacted the Labor Management Relations Act (61 Stat. 136, 29 U.S.C. § 141), providing a statutory right of action for money damages in certain classes of labor disputes. 61 Stat. 159, § 303 (b), 29 U.S.C. § 187 (b). Section 303 of that Act was compared with § 6 of the Norris-LaGuardia Act in *United Mine Workers v. Gibbs,* 383 U.S. 715, 86 S. Ct. 1130, 16 L. Ed. 2d 218, in which the court stated (p. 736) that "the responsibility of a union for the acts of its members and officers [under § 303] is to be measured by reference to ordinary doctrines of agency, rather tnan the more stringent standards of § 6." See also *Riverside Coal Co.* v. *United Mine Workers,* 410 F.2d 267, 270 (6th Cir.); note, 63 Harv L. Rev. 1035, 1039.

Thus it appears that the United States Supreme Court construes common-law rules of agency to be applicable in actions under § 303 of the Labor Management Relations Act but not under the stricter requirements of § 6 of the Norris-LaGuardia Act, of which our § 31-114 is the counterpart. The plaintiff has overlooked this distinction in relying on several federal decisions in which neither § 6 of the Norris-LaGuardia Act nor a state statute like § 31-114 was being considered.

We turn, then, to the specific question of the liability of the defendants, or any of them, under § 31-114. This involves consideration of the meaning of "actual participation", "actual authorization" and "ratification". We believe that the repetition of the word *actual* is of particular significance. Of course, as was mentioned in *Benoit* v. *Amalgamated Local 299,* 150 Conn. 266, 273, 188 A.2d 499, organizations such as these defendants can act only through the instrumentality of individuals. Likewise, it is generally understood that designated officers of such organizations are clothed with a general authority commonly accepted as incidental to the office held. We conclude that, in requiring *actual* authorization in order to impose liability, it is the intent expressed in § 31-114 to require more than the agency rules of respondeat superior and more than the general authority with which an officer of the organization is clothed by virtue of his office. We subscribe to the proposition that the statute requires proof by the plaintiff that the acts complained of were either expressly authorized by the organization to be charged or were such that they flowed from that authorization. *United Brotherhood of Carpenters* v. *United States,* 330 U.S. 395, 67 S.Ct. 775, 91 L.Ed. 973; *United Mine Workers* v. *Gibbs,* supra, 738-39.

The same limitations must be held to apply to ratification. The proof must be of a ratification knowingly made in express and direct acts or terms of assent to the acts complained of by the organization to be charged. Implied ratification such as the law of agency presumes from the acts of a principal is not sufficient. "There can be no rigid requirement that a union affirmatively disavow such unlawful acts as may previously have occurred. . . . What is required is proof, either that the union approved the violence which occurred, or that it participated actively or by knowing tolerance in further acts which were in themselves actionable under state law or intentionally drew upon the previous violence for their force." *United Mine Workers* v. *Gibbs,* supra, 739.

When we come to the element of participation, we conclude that if representatives of the organization to be charged are proved to have actually taken part in the illegal acts complained of then the organization can be held liable for those acts depending upon the number and status of the persons participating and the extent of the organization's knowledge of and power to control their actions. In applying this rule, care must be taken in cases such as those before us to treat the individuals involved in their proper relationship. We believe that, to the extent that the liability of one organizational level of the union is predicated in part on the acts of members or officers of another organizational level, knowledge of those acts by the organization sought to be charged and its authority and ability to control those acts is relevant to the question of the organization's liability.

Applying the foregoing principles to the material facts found by the trial court, it is our conclusion that, while a case may arguably be made for the liability of these defendants on the ground of ratification, liability should be made to rest on the ground of actual participation in the illegal or tortious acts complained of.

Summarizing, as briefly as we are able, the voluminous facts found by the trial court, and reciting only those which we consider to be material to our decision and not subject to correction, the picture presented is as follows. The president of International was Albert J. Hayes. A vice-president of International was Fred Coonley, who was responsible for the geographical area in which the plaintiff's plants were situated. Richard L. Thurer was International's representative assigned to supervise District 91 and Lodges 1746 and 743. District 91 had administrative control over Lodges 1746 and 743. District 91 and Lodges 1746 and 743 were affiliated with International. John K. Main was senior business representative, and George Cope, John R. Sullivan and Robert Nelson were business representatives of District 91. Cope was assigned to service

Lodge 1746 and Sullivan was assigned to service Lodge 743. Raymond Jutras and Robert Davis were district organizers for District 91. David Fraser was president and William Stewart was vice-president of Lodge 1746. Butler J. Seedman was president and Edward Batchelder was vice-president of Lodge 743. Lodges 1746 and 743 represented bargaining unit employees of the plaintiff.

The plaintiff had two collective bargaining agreements with Lodge 1746 which terminated on December 4, 1959. The plaintiff had collective bargaining agreements with Lodge 743 which expired on April 21, 1960. Bargaining efforts on the agreements were proceeding unsuccessfully. Prior to said dates, namely, on November 30, 1959, Coonley and another International vice-president met in Hartford with Thurer, Fraser and Seedman and discussed plans for a strike. On April 10, 1960, at a meeting of the members of Lodge 1746, Jutras reported that he had been assigned "to start a future program against" the plaintiff; that he had visited International's local lodge at the Republic Aviation Corporation, "for suggestions as to how to stage a successful strike"; that if they struck they must fight and fight hard and they would need hundreds of pickets, and also attorneys to fight injunctions. On April 11, 1960, at a meeting of District 91 attended by Main, Cope, Nelson, Davis, Sullivan, officers of District 91, and delegates from Lodges 1746 and 743, Jutras reported that he had been assigned to lay out machinery for strike action in Lodges 1746 and 743, that "we can get experienced help from Grand Lodge to train and help our membership", that he had visited International's local lodge at Republic Aviation, that Republic was "in the same class" as United, and that he had "learned much" at Republic. At the same meeting, Cope reported that District 91 was arranging for Hayes, president of International, to address a mass meeting of the members of Lodges 1746 and 743 on May 22, 1960, the meeting to be coordinated by vice-president Coonley. There had been violence in the Republic Aviation

strike which had been considered a "precedent-setting victory" for International. The strike at Republic Aviation had been under Coonley's jurisdiction, and Joseph Curran had worked there under Coonley's supervision. Curran had been International's representative assigned to International's local union which struck against Republic Aviation. District 91 requested Coonley to assign Curran to address 409 picket captains from Lodges 1746 and 743 concerning their strike duties, and he did so on May 15, 1960. Main, as senior business representative of District 91, was in charge of the strike at the plaintiff's plants and had the function of obtaining the release of pickets who were arrested. Jutras was his assistant and was to coordinate the activities of the other business representatives and district organizers. Cope and Nelson were assigned to supervise activities at the gates at the plaintiff's East Hartford plant, and Cope's intention was to block the gates so that employees would be unable to enter. Davis' assignment was to keep the gates manned by pickets.

A mass meeting, supervised by Coonley, was held as scheduled at the Bushnell Memorial Hall on Sunday, May 22, 1960, which was addressed by Hayes, president of International. The next day Lodges 1746 and 743 voted to strike. Direct responsibility for conducting the strike at the plaintiff's plants was delegated by International to vice-president Coonley and Thurer, International's representative, although such a delegation was not in accordance with International's usual policy. On May 25, 1960, Lodges 1746 and 743 applied to International for strike sanctions, and on June 2, International granted the sanctions. On June 8, 1960, the strike commenced at the plaintiff's East Hartford and Manchester plants about 9 a.m. and at the plaintiff's Windsor Locks and Broad Brook plants at about 9:55 a.m.

From June 8 through June 13, 1960, strikers marched by the hundreds, shoulder to shoulder, at the gates of the East Hartford plant, massed at the gates and blocked vehicles

containing employees attempting to enter or leave, physically attacked employees attempting to enter or leave in automobiles or on foot, made contemptuous and threatening gestures to employees, shouted profanities, obscenities and threats of physical harm, shoved, kicked, pushed, slapped, and scratched employees, and broke mirrors and radio antennas and windows of automobiles attempting to enter or leave the plant. The police were compelled to push strikers forcibly aside in order to clear passageways for vehicles entering or leaving the plant. Hundreds of automobiles containing workers turned away. The police attempting to control activities were shoved against and onto the hoods of automobiles. Nails, tacks and other sharp objects were strewn on the road surface. The occupants of automobiles and pedestrians were spat at. The registration numbers of automobiles and the identity of occupants of vehicles were ostentatiously noted, and vehicles and their occupants were photographed. The photographs were posted on the bulletin board at 1746's lodge hall to intimidate employees so that they would not go to work. Mirrors were used to reflect sunlight into the lenses of cameras which the plaintiff attempted to use to record pictures of the activities. The result was that at the gates of the East Hartford plant traffic was snarled and blocked for many blocks. The aforementioned activities were participated in by thousands of members and many of the stewards, picket captains and committeemen of Lodge 1746. Fraser, the president, and Stewart the vice-president of Lodge 1746, Nelson, the business representative of District 91, Cope, the business representative of District 91, Jutras, district organizer of District 91, and Thurer, International's representative, all participated personally in the activities described. Thurer reported daily by telephone to Coonley as to what was going on, and Coonley regularly came to Hartford during the strike to meet with Thurer. International's representatives G. Poulin, G. Page and A. Giglio were also present at or near the entrance to the plaintiff's East Hartford plant from June 8 through June 11.

From June 8 through June 13, the same tactics were employed at the plaintiff's Windsor Locks plant, Broad Brook plant and Manchester plant. More than 1000 members, and many stewards, committeemen and officers of Lodge 743 participated in the activities at the Windsor Locks and Broad Brook plants. Seedman, president, and Batchelder, vice-president, of Lodge 743 as well as vice-president William Merrigan and Sullivan, business representative of District 91, participated personally. Special representative James D. Moore and auditor Benner of International along with Thurer, Symington, Page and Poulin, all International representatives, were present at the entrances of the Windsor Locks and Broad Brook plants occasionally. The strike activities of Lodges 1746 and 743 were so similar as to indicate a concert of activities.

The plaintiff instituted injunction actions in the Superior Court to restrain the mass picketing, violence and other illegal activities, and an order to show cause was issued returnable June 13, 1960. The general counsel of International came to Hartford and, after conferences, stipulations were entered into in substance enjoining the defendants from engaging in mass picketing, interfering by force, violence or intimidation with employees and limiting the number of pickets at the plaintiff's gates. Another action was brought by the regional director of the Labor Management Relations Board in the United States District Court to enjoin International and Lodges 1746 and 743 from the unlawful activities taking place at the plaintiff's plants and, on June 16, a stipulation in substance similar to that issued in the Superior Court was entered into.

Following the issuance of the injunctions, the strike continued until, on August 8 and 9, Lodge 743 and Lodge 1746, respectively, voted to end it. Between June 16 and August 8 and 9, however, the violence at the gates of the several plants materially decreased. The mass picketing

ceased, but picketing in limited numbers continued. Pickets, however, still obstructed vehicles until required to move by the police, struck, coerced and threatened persons, and recorded registration numbers of automobiles and the names of the occupants. Trucks of the plaintiff's suppliers had difficulty in entering the plants or had to turn away, and private contractors were prevented from entering. District organizer Davis threatened an employee with bodily harm if she continued working. Thurer, International's representative, threatened bodily injury to the plaintiff's photographer.

During the strike International's general counsel came to Hartford and recommended that all of International's representatives and district organizers assigned to deal with the plaintiff be suspended but International took no action to suspend them. There is nothing in the finding to indicate that, until the stipulation in the injunction actions, any defendant made any effort to restrict the activities at the plaintiff's plants.

In discussing "actual authorization" in *United Brotherhood of Carpenters* v. *United States,* 330 U.S. 395, 409, 67 S. Ct. 775, 91 L. Ed. 973, the court said: "There is no implication in what we have said that an association or organization in circumstances covered by § 6 [of the Norris-LaGuardia Act] must give explicit authority to its officers or agents to violate in a labor controversy the Sherman Act or any other law or to give antecedent approval to any act that its officers may do." We think an analogous rule applies under § 31-114 with respect to "actual participation" and that explicit authority to participate need not be proved in order to establish the organization's participation. The court found the activity which we have summarized to be tortious, as it obviously was. It further found that those acts followed concerted preliminary planning after study of the violence indulged in by International's local union in the Republic Aviation strike, which International had considered a "precedent-

setting victory". From June 8 to 13, large numbers of members and officers of the several defendants actively participated in the extreme violence which took place at the several plants, many of the officers who participated held positions of the highest authority and responsibility in the several organizations, and, although they were obviously fully aware of what was going on, no effort whatever appears to have been made by any defendant to end or restrict the activity prior to the stipulations in connection with the injunction actions. Thereafter, acts of the same sort and by some of the same persons continued at the various plants, although in a lesser degree, until the strike ended in August. Even during this latter period there appears to have been no effort exerted by any defendant to end the violence completely. The activity was reprehensible in the extreme and it is not to the credit of any of the defendants to attempt to assert as a shield that the actions complained of were those of individuals divorced from their sponsorship. The trial court was fully warranted in concluding that all of the defendants were liable for the acts which occurred at the various plants between June 8 and August 8 and 9, 1960, because of their actual participation in those acts. *Riverside Coal Co.* v. *United Mine Workers,* 410 F.2d 267, 272 (6th Cir.). In view of this conclusion, we see no need for further discussion of the subject of actual authorization or ratification.

Other vicious and lawless acts are found by the trial court to have been committed by individuals away from any of the plaintiff's premises. These are found to have been inflicted on employees of the plaintiff and to have consisted of burning and otherwise damaging automobiles, homes and outbuildings, flooding the cellars of homes, releasing the air from automobile tires, and harassment on the highways. The admission of the evidence concerning some of these acts was objected to by the defendants and is assigned as error. It is unnecesary to discuss these

assignments, and we have not recited these incidents as proven facts material to the issue of the defendants' liability for two reasons. In some instances, the evidence concerning some of the incidents consists of reports received by the plaintiff of acts done by unidentified persons. In other cases the evidence relates to acts which are not sufficiently shown to have been within the knowledge of any but the few persons concerned and thus not within the knowledge or control of the defendants. For these reasons we have concluded, without engaging in extended discussion of specific events, or rulings concerning the evidence relating to them, that the defendants are not shown to have participated within the meaning of § 31-114 in the acts, vicious and lawless as most of them were, which occurred other than at the gates or premises of the plaintiff's several plants and, consequently, are not liable for damages based upon those activities. To the extent that the court awarded damages arising from activities which occurred other than at the plaintiff's several plants we must find error.

III

The trial court rendered judgments in the two cases for the plaintiff to recover a total of $1,754,387.25 in compensatory and exemplary damages. Both the plaintiff and the defendants assign error in the damages awarded. In assessing compensatory damages the trial court awarded the plaintiff a sum attributable to losses caused by the involuntary absence of employees due to fear or compulsion resulting from the tortious acts which were committed both at the plaintiff's premises and elsewhere. We have concluded that the court erred in finding the defendants liable for tortious acts which were committed away from the plaintiff's premises. Consequently, the case must be remanded for a new trial on the damage issue. We therefore do not discuss in detail the plaintiff's and the defendants' assignments of error concerning the various

aspects of the award of compensatory damages. We shall limit our discussion to matters which may serve to aid the trial court on the remand.

The defendants claim, in effect, that the court erred in allowing a recovery for losses which the plaintiff would inevitably have sustained from lawful strike activity. In support of this claim they correctly assert that a state court may properly award damages only for losses arising from tortious conduct and not for losses arising from protected strike activity. See *United Mine Workers* v. *Gibbs*, 383 U.S. 715, 729-30, 86 S. Ct. 1130, 16 L. Ed. 2d 218. The short answer is that the court did limit its award only to damages arising from tortious acts.

The plaintiff claims in its cross appeal that the trial court erred in failing to award all of the losses incurred by the plaintiff as a result of the strike on the ground that tortious strike conduct was so intertwined with lawful strike conduct as to preclude apportionment. The trial court overruled this claim and the plaintiff assigns error in this ruling. The plaintiff relies principally on *Milk Wagon Drivers Union* v. *Meadowmoor Dairies, Inc.*, 312 U.S. 287, 61 S. Ct. 552, 85 L. Ed. 836, as interpreted in *United Mine Workers* v. *Gibbs*, supra, 731. *Meadowmoor* was an injunction action in which the court held that a state court could properly enjoin picketing in itself peaceful which was contemporaneously enmeshed with concededly outlawed violent conduct. Subsequently, in *Youngdahl* v. *Rainfair, Inc.*, 355 U.S. 131, 139, 78 S. Ct. 206, 2 L. Ed. 2d 151, the court held that a state court could not enjoin both peaceful picketing and violent picketing, apparently treating the case before it as differing from *Meadowmoor* in that a pattern of violence was not established which would inevitably reappear if peaceful picketing were resumed. In *Teamsters Union* v. *Morton*, 377 U.S. 252, 84 S. Ct. 1253, 12 L. Ed. 2d 280, the court appears in effect to have applied the *Youngdahl* principle and held that damages could not be awarded for lawful strike activity although

unlawful acts were indulged in by the union elsewhere. And in *United Mine Workers* v. *Gibbs,* supra, the court, in referring to *Meadowmoor,* said (p. 732): "Where the consequences of peaceful and violent conduct are separable, however, it is clear that recovery may be had only for the latter." Here again, the answer is that, in the cases before us, the court was able to determine damages based only on the tortious acts.

The plaintiff has also assigned error in the court's overruling of its claim that the burden was on the defendants to establish the allocation of losses between peaceful strike activity and unlawful strike activity. The ruling was correct. It was the plaintiff's burden to prove the damages which it claimed had resulted from the tortious acts complained of. See *Grzybowski* v. *Connecticut Co.,* 116 Conn. 292, 294, 164 A. 632.

In assessing compensatory damages the trial court took as the measure of damages the monetary value of the plaintiff's losses due to the involuntary absence of employees because of fear and coercion as a result of the illegal tortious acts which occurred. The formula used by the court to determine such damages was to arrive at (1) the monetary value of the total strike loss sustained by the plaintiff because of a deprivation of a portion of its productive labor force, (2) how long the strike would have lasted absent the illegal tortious acts, and (3) the amount of absence on the part of employees which was involuntary because of fear and coercion resulting from illegal tortious acts.

The trial court first computed the monetary value of the total damages sustained by the plaintiff because of its being deprived of a portion of its productive labor force at the Pratt & Whitney Division plants and at the Hamilton Standard Division plants. The figures arrived at were based primarily on two elements: (1) excessive manufacturing costs due to the diminution of the labor

force, and (2) unabsorbed fixed overhead expenses, referred to as "wasted overhead", due to diminution of the labor force.

The court found that the plaintiff's standard accounting system afforded an adequate and reasonable basis for computing the plaintiff's excessive manufacturing costs and wasted overhead due to the man-days of labor lost. The defendants attack this conclusion. It was enough that the court relied on evidence which showed "the extent of . . . [this item] as a matter of just and reasonable inference, although the result be only approximate." *Story Parchment Co.* v. *Paterson Parchment Paper Co.,* 282 U.S. 555, 563, 51 S. Ct. 248, 75 L. Ed. 544; *Ball* v. *T. J. Pardy Construction Co.,* 108 Conn. 549, 551, 143 A. 855. For the same reason, it was proper for the court to rely on evidence concerning the plaintiff's manufacturing costs for the period from January to May, 1960, as a base for computing the plaintiff's excess manufacturing costs from June to August, 1960. Here again the defendants' claim of lack of exactness fails. In computing the excessive manufacturing costs the court included costs for corrective work, training, spoiled work, labor efficiency variance, premiums paid for overtime work made necessary by absent employees, and, in the case of Hamilton Standard, the cost of excessive "make or buy conversion". The defendants contested all these items. We believe, however, that the trial court properly computed excessive manufacturing costs. We believe, also, that the costs of wasted overhead as found by the trial court is supported by the evidence. In determining wasted overhead on remand, however, the overtime hours worked during the strike should be taken into account. See *Sheet Metal Workers International Assn., Local 223* v. *Atlas Sheet Metal Co.,* 384 F.2d 101, 110 (5th Cir.).

The defendants assign error in the court's ruling denying their offer to prove that the plaintiff had been reimbursed for its losses through the terms of government contracts.

The claim is without merit. Under the collateral source rule the evidence would be inadmissible. See *Lashin* v. *Corcoran,* 146 Conn. 512, 515, 152 A.2d 639. The basis of our well-established collateral source rule is that a wrongdoer shall not benefit from a windfall from an outside source. That rule is applicable in this as in any tort case.

Having arrived at a figure representing the value of the total strike damage sustained by the plaintiff due to deprivation of a portion of its productive labor force, the court next proceeded to determine the portion of this figure which represented the loss directly due to the involuntary absence of employees because of fear and coercion as a result of the illegal tortious activities which had occurred. The court found that if the violence had not occurred, the strike would not have lasted beyond three weeks at the Pratt & Whitney plants and not more than six weeks at the Hamilton Standard plants. The court then went on to find the total number of employees at each plant prior to the strike, the number who reported to work and the number who left early on the first day of the strike, the percentage of those who failed to report for work during the first weeks of the strike because of fear or because they were unable to enter, and the percentage of involuntary absentees at the end of the strike. The court concluded that the defendants were not liable for damages for loss of man hours for the first three weeks of the strike at the Pratt & Whitney plants and for the first six weeks at Hamilton Standard; it found the mean percentage of employees who stayed out of work for the remaining period due to fear; and it applied that percentage to the plaintiff's total loss for that period and so arrived at the damages awarded.

The trial court's findings as to how long the strike would have lasted at the Pratt & Whitney plants and at the Hamilton Standard plants were based on the testimony of a labor economist offered as a witness by the plaintiff,

who gave his opinion, as an expert, as to how long the strike would have lasted at the plaintiff's plants had there been no violence. This testimony was admitted over the defendants' objection and the court's action in admitting the testimony is assigned as error by the defendants. The defendants introduced evidence through an expert witness who gave it as his opinion that it was impossible to predict the length of a nonviolent strike. The trial court specifically found that it did not believe this witness, and this is assigned as error by the defendants. We believe that the opinion of the plaintiff's witness as to how long the strike would have lasted, absent violence, was too speculative to be accorded significant weight and is not a sufficient basis for the court's finding concerning the length of the strike if violence had not occurred. See *Stephanofsky* v. *Hill,* 136 Conn. 379, 384-85, 71 A.2d 560.

It was not necessary for the trial court to attempt to estimate the length of time a nonviolent strike would have lasted. It had only to determine what damage resulted from the tortious acts. Whenever loss results to a party naturally and directly from the tortious or illegal act of another, the loss is the proper subject of judicial relief by compensation in damages. *Division 163* v. *Connecticut Co.,* 148 Conn. 563, 569, 173 A.2d 130; *Mourison* v. *Hansen,* 128 Conn. 62, 66, 20 A.2d 84. There must be a causal relation established between the tort and the damage sustained. *Robinson* v. *Southern New England Telephone* Co., 140 Conn. 414, 418, 101 A.2d 491. The trier is concerned with reasonable probabilities. *Sheiman* v. *Sheiman,* 143 Conn. 222, 225, 121 A.2d 285; *Boland* v. *Vanderbilt,* 140 Conn. 520, 525, 102 A.2d 362. And the basic aim is to compensate the plaintiff for the loss caused by the tortious conduct so far as money can do so. *Youngset, Inc.* v. *Five City Plaza, Inc.,* 156 Conn. 22, 27, 237 A.2d 366. "Where a defendant has by his wrongful conduct made the calculation of damages difficult, he will not be heard to urge such difficulty as a reason for not assessing

by approximation." *Crowell* v. *Palmer,* 134 Conn. 502, 510, 58 A.2d 729. "From the very nature of the situation, the amount of loss cannot be proved with exactitude and all that can be required is that the evidence, with such certainty as the nature of the particular case may permit, lay a foundation which will enable the trier to make a fair and reasonable estimate." *Ball* v. *T. J. Pardy Construction Co.,* 108 Conn. 549, 551, 143 A. 855; *Collens* v. *New Canaan Water Co.,* 155 Conn. 477, 490, 234 A.2d 825; *Humphrys* v. *Beach,* 149 Conn. 14, 21, 175 A.2d 363.

Each of the actions at issue here sought damages caused by the defendants' "wilful and malicious" tortious conduct. Clearly enough the defendants had the full right to stage a strike but they had no right to participate, as the evidence established that they did, in violent and unlawful acts at the gates of and on the premises of the plaintiff's several plants. Those acts occurred from June 8 to August 8 and 9, 1960. Their effect was to reduce the number of employees who would normally have been expected to report for work and this caused substantial loss to the plaintiff. For the damage proved to have been caused to the plaintiff by those acts, the defendants should be held liable under the established rules of tort liability. In computing the monetary value of the plaintiff's strike losses at the Pratt & Whitney Division plants and Hamilton Standard Division plants due to the involuntary absence of employees because of fear and coercion as a result of the illegal tortious activities which occurred at these plants, the trial court should, on remand, determine the amount of absence from the Pratt & Whitney Division plants which was involuntary as the result of the illegal tortious activities which occurred at those plants from June 8 to August 8 and 9, 1960, and the amount of absence from the Hamilton Standard Division plants which was involuntary as a result of the illegal tortious activities which occurred at those plants from June 8 to August 8 and 9, 1960. On the basis of the figures representing the

monetary value of the total strike losses sustained by the plaintiff at each of these divisions due to the loss of productive labor and the figures representing the aforementioned amount of involuntary absence the damage to which the plaintiff is entitled may be determined.

There remains the question of whether the trial court properly determined the amount of absence from the Pratt & Whitney Division plants and the Hamilton Standard Division plants which was involuntary. The court made its determination in this regard mainly on the basis of the testimony of the aforementioned labor economist who was permitted, over the defendants' objection, to state his opinion as to the percentage of the plaintiff's employees who stayed away from their employment involuntarily, and the reception of this evidence by the court is assigned as error by the defendants. While expert opinion would be relevant provided the court accorded it persuasive weight as was done in these cases, other methods of determining the element of involuntary absence of equal or greater weight might be resorted to such as a representative sampling of employees who refrained from work. The evidence to be relied on for arriving at a reasonable approximation is for the court to decide. In determining the amount of involuntary absence, however, the trial court, as we have already stated, improperly took into account absence due to fear engendered by violence and illegal acts which took place away from the plaintiff's premises as well as absence due to fear engendered by violence and illegal acts which took place at the plaintiff's plants. Only the involuntary absences due to the violence and illegal acts at the plants should be considered.

The plaintiff alleged, and the court found, that tortious illegal acts which occurred during the strike were willful and malicious. Under these circumstances, the plaintiff was entitled to recover punitive or exemplary damages in an amount which would serve to compensate the plaintiff

to the extent of its expenses of litigation less taxable costs. *Collens* v. *New Canaan Water Co.*, 155 Conn. 477, 488, 234 A.2d 825; *Triangle Sheet Metal Works* v. *Silver*, 154 Conn. 116, 127, 222 A.2d 220. The court found and awarded the legal fees and expenses exclusive of taxable costs incurred by the plaintiff in these cases including attorneys fees for successfully defending a case brought by the defendants in the federal courts seeking to enjoin the prosecution of these cases. This award was proper.

The trial court awarded interest on the sum determined as compensatory damages in each case from August 12, 1960. The defendants assign error in this action of the court. The defendants argue, however, that, since the plaintiff did not commence these actions until almost three years after August 12, 1960, interest should have been awarded only from the date of the judgment because the plaintiff was responsible for the delay. The plaintiff counters with the argument that after the actions were brought the preliminary pleading indulged in by the defendants caused delay in getting the cases to judgment.

Both arguments miss the mark for we believe the court erred in the award of interest from August 12, 1960, because it was based on an unliquidated claim. We have uniformly held interest to be allowable from the date of injury on damages resulting from tortious injury to property. *Wells Laundry & Linen Supply Co.* v. *Acme Fast Freight, Inc.*, 138 Conn. 458, 463, 85 A.2d 907; *New York, N.H. & H.R. Co.* v. *Ansonia Land & Water Power Co.*, 72 Conn. 703, 705, 46 A. 157; *Regan* v. *New York & N.E.R. Co.*, 60 Conn. 124, 142, 22 A. 503. As the decisions indicate, however, such an award is limited to cases in which the damage is of a sort which could reasonably be ascertained by due inquiry and investigation on the date from which interest is awarded. Our previous discussion makes clear that the compensatory damages awarded in these cases is not of that description. Interest should have been awarded only from the date of judgments.

IV

The defendants' claim that these actions, having been brought in 1963 based upon events which occurred in 1960 are barred by the Statute of Limitations is without merit. The three-year Statute of Limitations, § 52-577, is applicable to all tort actions other than those actions carved out of § 52-577 and enumerated in § 52-584 or another section. *Collens* v. *New Canaan Water Co.*, supra, 491.

None of the other claims of the parties merit any discussion.

For the foregoing reasons we conclude that both cases must be remanded to the Superior Court solely for the purpose of reassessing the compensatory damages in accordance with this opinion.

There is error in part, the judgment is affirmed in each case except as to the amount of compensatory damages with interest awarded and a new trial is ordered in each case limited to that issue.

In this opinion the other judges concurred.

SUPREME COURT
HARTFORD COUNTY

October Term, 1969

133884

UNITED AIRCRAFT CORPORATION

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS

133885

UNITED AIRCRAFT CORPORATION

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS

Defendants' Motion for Reargument

May 11, 1971.

The motion by the defendants to reargue is denied.

By the Court,

ALCORN
Chief Justice

SUPREME COURT OF CONNECTICUT
OFFICE OF THE REPORTER OF JUDICIAL DECISIONS

DONALD H. DOWLING
REPORTER OF JUDICIAL DECISIONS

BOX 1350
HARTFORD 06101

11 May 1971

Norman Zolot, Esq.
9 Washington Avenue
Hamden, Connecticut

John D. Fassett, Esq.
205 Church Street
New Haven, Connecticut

Re: *United Aircraft Corporation* v. *International Association of Machinists, et al.*, No. 6646

Gentlemen:

Please be advised that the opinion in the above-captioned matter has been amended.

The following paragraph . . .

> "The court found that the plaintiff had sustained substantial damage, but, as we have stated, the amount thereof must be recomputed because the court allowed the plaintiff nothing for acts which occurred in the period during which it found that a nonviolent strike might have lasted and did award damages arising from events which occurred off the plaintiff's premises. For the foregoing reasons we conclude that both cases must be remanded to the Superior Court solely for the purpose of reassessing the compensatory damages in acordance with this opinion." . . .

has been substituted for the first paragraph on page eleven, column one, of the Connecticut Law Journal (Vol. 32, No. 43) dated 27 April, 1971.

Very truly yours,

DONALD H. DOWLING
Donald H. Dowling

DHD:mhw

STATE OF CONNECTICUT
SUPREME COURT AT HARTFORD

First Tuesday of October 1969

No. 6646

No. 133884

UNITED AIRCRAFT CORPORATION, organized and existing under the laws of the State of Delaware, with its principal place of business in East Hartford, Connecticut

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS, an unincorporated voluntary association with its principal office in Washington, D. C.;

AERONAUTICAL INDUSTRIAL DISTRICT LODGE No. 91, INTERNATIONAL ASSOCIATION OF MACHINISTS, an unincorporated voluntary association with its office in East Hartford, Connecticut; and

INDUSTRIAL AIRCRAFT LODGE 1746 of the INTERNATIONAL ASSOCIATION OF MACHINISTS, an unincorporated voluntary association with its principal office in East Hartford, Connecticut

No. 133885

UNITED AIRCRAFT CORPORATION, organized and existing under the laws of the State of Delaware, with its principal place of business in East Hartford, Connecticut

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS, an unincorporated voluntary association with its principal office in Washington, D. C.;

AERONAUTICAL INDUSTRIAL DISTRICT LODGE No. 91, INTERNATIONAL ASSOCIATION OF MACHINISTS, an unincorporated voluntary association with its office in East Hartford, Connecticut; and

LODGE 743, INTERNATIONAL ASSOCIATION OF MACHINISTS, an unincorporated voluntary association with its principal office in Windsor Locks, Connecticut

Judgment

The above entitled matters were combined by stipulation approved by the court on December 4, 1968 for the purposes of appeal.

These appeals by the defendants from the judgments of the Superior Court in and for the county of Hartford were filed with the Clerk of said Court on the 4th day of December, 1968 and on the 12th day of December, 1968 the plaintiff filed its cross-appeals from said judgment, and said appeals came thence to the 15th day of September 1969 when the defendants filed their assignment of errors and to the 12th day of September 1969 when the plaintiff filed its assignment of errors, and thence to the 30th day of September 1969 when the defendants filed their additional assignment of errors, as may appear in the certified transcript of record on file in this court, and said appeals came thence to this Court at its term held on the first Tuesday of October 1969, and thence to the present term when the parties appeared and were fully heard.

And now this Court finds there is error in part.

Whereupon it is adjudged that the judgment is affirmed in each case except as to the amount of compensatory damages with interest awarded and a new trial is ordered in each case limited to that issue and that the defendants recover of the plaintiff costs taxed at $10,126.05, to be reduced by an amount equal to the cost of printing defendants exhibit 65 and plaintiff's exhibit CC, and that the plaintiff recover of the defendants costs taxed at $1418.30.

By the Court,

THOMAS H. ABRAHAM, *Clerk*

Date of Judgment April 27, 1971

Memorandum of Decision

These actions were originally instituted to recover damages for losses allegedly resulting from tortious conduct and willful and malicious acts committed by the defendants during a strike at the plaintiff's plants in East Hartford, Windsor Locks, and Broad Brook between June 8 and August 9, 1960. The actions were consolidated and tried to the court, Gaffney, J.

There are four different defendants representing three different local levels. In Docket No. 133884 the defendants are The International Association of Machinists, hereinafter referred to as International. The second defendant is Aeronautical Industrial District Lodge No. 91. The third defendant is Industrial Aircraft Lodge 1746. The members of Lodge 1746 were employed at the plaintiff's East Hartford and Manchester factories.

In Docket No. 133884 the aforementioned International and District No. 91 are defendants; the third defendant in that action being Industrial Aircraft Lodge 743, the members of which were employed at the plaintiff's Windsor Locks and Broad Brook factories.

The plaintiff in Docket # 133884 is hereinafter referred to as Pratt & Whitney. In Docket # 133885 the plaintiff is referred to as Hamilton Standard.

The trial court rendered judgment in favor of the plaintiff against the defendants in Docket # 133884 in the amount of $1,369,725.25 with interest from August 12, 1960. The trial court also rendered judgment in favor of the plaintiff in the amount of $88,662 with interest from August 12, 1960. The court also awarded exemplary damages in both cases in the total amount of $296,000 including costs and attorneys fees.

Both the plaintiff and the defendants appealed from these judgments. The Supreme Court in United Aircraft Corporation vs. International Association of Machinists

et al, 161 Conn. 79, found error in part and ordered a new trial.

With respect to the liability issue, the Supreme Court held that the defendants were not responsible for tortious conduct which occurred away from any of the plaintiff's several other plants and were hence not liable for damages based upon those activities. *Ibid.* 97. Liability, however, was affirmed against the defendants for tortious conduct and willful and malicious acts committed at the gates of and on the premises of the plaintiff's several plants at East Hartford and Windsor Locks and Broadbrook.

The Supreme Court also found error with respect to the compensatory damages rendered in favor of the plaintiff.

In the first instance, the Supreme Court determined that in computing the monetary value of the total damages sustained by the plaintiff during the strike by reason of loss of productivity, the court properly computed excessive manufacturing costs and the costs of wasted overhead. It held that on remand, overtime worked during the strike should be taken into account. *Ibid.* 101. It also determined that the plaintiff was entitled to recover damages for all tortious conduct committed by the defendants at the plant or on the premises of the plaintiff during the entire length of the strike and not as the trial court had done by eliminating a three-week period which the court had found would have been the normal length of the strike at the Pratt & Whitney plant and a like six-week period at the Hamilton Standard plant. *Ibid.* 103.

The award of exemplary damages was upheld by the Supreme Court but the award of interest was held to be error, since it could be computed only from the date of the judgments. In remanding the case the Supreme Court stated:

> The court found that the plaintiff had sustained substantial damage, but, as we have stated, the amount

thereof must be recomputed because the court allowed the plaintiff nothing for acts which occurred in the period during which it found that a nonviolent strike might have lasted and did award damages arising from events which occurred off the plaintiff's premises. For the foregoing reasons we conclude that both cases must be remanded to the Superior Court solely for the purpose of reassessing the compensatory damages in accordance with this opinion. There is error in part, the judgment is affirmed in each case except as to the amount of compensatory damages with interest awarded and a new trial is ordered in each case limited to that issue.

Ibid. 108.

In assessing compensatory damages in the prior trial, part of the formula used by the trial court to determine such damages was to arrive at the monetary value of the total strike loss sustained by the plaintiff because of deprivation of its productive labor force. *Ibid.* 100.

On appeal, the Supreme Court sustained the trial court's finding

> The trial court first computed the monetary value of the total damages sustained by the plaintiff because of its being deprived of a portion of its productive labor force at the Pratt & Whitney Division plants and at the Hamilton Standard Division plants. The figures arrived at were based primarily on two elements: (1) excessive manufacturing costs due to the diminution of the labor force and, (2) unabsorbed fixed overhead expenses, referred to as "wasted overhead," due to diminution of the labor force.
>
> *Ibid.* 100.

Although the defendants in their appeal contested all of these items, the Supreme Court held that the trial court had properly computed excessive manufacturing costs.

> We believe, however, that the trial court properly computed excessive manufacturing costs. We believe, also that the costs of wasted overhead as found by the trial court is supported by the evidence. In determining wasted overhead on remand, however, the overtime hours worked during the strike should be taken into account.
>
> *Ibid.* 101.

In the present trial, the plaintiff followed the same procedure. Plaintiff's exhibits H-1 and K-1, which I accept, represent a computation by the Comptroller of the plaintiff, Charles Preston, of the monetary value of the total damages sustained by the plaintiff because of its being deprived of a portion of its productive labor at the Pratt & Whitney plants and at the Hamilton Standard plants with proper allowance being made in determining wasted overhead as directed by the Supreme Court for overtime hours worked during the strike.

Exhibit H-1 computes the total damages in the Pratt & Whitney case incurred during the strike period as $4,149,151. Exhibit K-1 computes the total damages incurred during the strike period at the Hamilton Standard plant as $2,304,718. The defendant attacked many of these computations, renewing many of the objections which were heard by the Supreme Court at the original trial. A lengthy discussion of the defendant's objections would serve no purpose in this memorandum. I accept as credible the method of computing the damages based on excessive manufacturing cost and the costs of wasted overhead in both cases as set forth in plaintiff Exhibits H-1 and K-1.

There remains the question of course of arriving at the portion of these figures which represents the loss directly due to the involuntary absence of employees because of fear and coercion as a result of the illegal tortious activities which occurred at these plants. Based on the findings of the trial court, the Supreme Court stated:

> For the damage proved to have been caused to the plaintiff by those acts, the defendants should be held liable under the established rules of tort liability. In computing the monetary value of the plaintiff's strike losses at the Pratt & Whitney Division plants and Hamilton Standard Division plants due to the involuntary absence of employees because of fear and coercion as a result of the illegal, tortious activities which occurred at these plants, the trial court should, on remand, determine the amount of absence from the Pratt & Whitney Division plants which was involuntary as the result of the illegal, tortious activities which occurred at those plants from June 8 to August 8 and 9, 1960, and the amount of absence from the Hamilton Standard Division plants which was involuntary as a result of the illegal, tortious activities which occurred at those plants from June 8 to August 8 and 9, 1960. On the basis of the figures representing the monetary value of the total strike losses sustained by the plaintiff at each of these divisions due to the loss of productive labor and the figures representing the aforementioned amount of involuntary absence the damage to which the plaintiff is entitled may be determined.
>
> *Ibid.* 104, 105.

This determination occupied the greater portion of the trial in this case. Twenty-four days were required to complete the retrial. I accept it as facts the acts of tortious conduct set forth in the finding made by Judge Gaffney during the strike period at these plants. I did not regard it as within the scope of the remand for me to try the existence or non-existence of the tortious conduct at or about the plant or premises or gates of the plaintiff's plants. However, I did look at the films taken by the plaintiff at the gates of Pratt & Whitney, East Hartford plant as well as the Hamilton Standard plant in Windsor Locks during June 8, 9, and 13, 1960, largely to get a personal reaction to the extent of the violence.

The plaintiff offered as witnesses on this issue Dr. Herbert R. Northrop who is Professor of Industry and Chairman of the Department of Industry of the Wharton School of Finance and Commerce of the University of Pennsylvania. He was a Senior Hearing Officer with the War Labor Board during World War II. He had been an Industrial Relations Consultant for Ebasco Services, a large management consulting firm, Vice President for Industrial Relations for Penn-Texas Corporation and Employer Relations Consultant for General Electric Company. While with General Electric Company, he had chief staff responsibilities for seventy of the company's plants and 100,000 employees in all aspects of industrial and employee relations. He has published 150 articles in various professional and personal journals, and has written ten books. One of the books is a textbook entitled "Economics of Labor Relations" which is the most popular textbook in the field and is used at about 250 colleges and universities. He had written two articles and one book on the labor relations policies of General Electric Company which dealt with, among other things, General Electric's strike in the fall of 1960.

Morgan R. Mooney was Vice-President for Industrial Relations of United Aircraft Corporation at the time of the first trial. At the time of the strike in 1960, he was Personnel Director of United Aircraft Corporation, a post in which he acted as assistant or second in command to the Vice-President for Industrial Relations. From 1933 until 1935 he worked for the federal government as a labor compliance officer. He then became Deputy Labor Commis-

sioner in the Connecticut Department of Labor and Factory Inspection from 1935 to 1942. In that position he acted as Secretary of the State Board of Mediation and Arbitration and had the responsibility of attempting to mediate and settle labor disputes including strikes throughout the State of Connecticut. In that position Mooney made factual investigations of quite a large number of strikes, which investigation included facts about the company, its products, its management, the number of employees, the number in the bargaining unit, the union that represented the employees, the issues involved in the strike, and the positions of the union and the management with respect to each issue.

The defendants offered a group of eminent authorities in the field of labor, economics, social sciences, including psychology, as well as statistics. It was the defendants' position that the testimony of both Dr. Northrup and Mr. Mooney in quantifying the number of employees whose absence was involuntary because of fear and coercion as a result of the illegal tortious activities which occurred at the plants was entirely speculative and could be determined with no reasonable accuracy.

With respect to this issue the Supreme Court stated:

> There remains the question of whether the trial court properly determined the amount of absence from the Pratt & Whitney Division plants and the Hamilton Standard Division plants which was involuntary. The court made its determination in this regard mainly on the basis of the testimony of the aforementioned labor economist who was permitted over the defendants' objection, to state his opinion as to the percentage of the plaintiff's employees who stayed away from their employment involuntarily, and the reception of this evidence by the court is assigned as error by the defendants. While expert opinion would be relevant provided the court accorded it persuasive weight as

> was done in these cases, other methods of determining the element of involuntary absence of equal or greater weight might be resorted to such as a representative sampling of employees who refrained from work. The evidence to be relied on for arriving at a reasonable approximation is for the court to decide.
>
> *Ibid.* 105, 106.

I construe this language to mean that the testimony of Dr. Northrop and Mr. Mooney were admissible, and that it could be accorded persuasive weight if in the opinion of the trier it was entitled to it. The Supreme Court suggested that as stated above:

> other methods of determining the element of involuntary absence of equal or greater weight might be resorted to such as a representative sampling of employees who refrained from work. The evidence to be relied on for arriving at a reasonable approximation is for the court to decide.
>
> *Ibid.* 105, 106.

All of the defendants' experts agreed that it would have been impossible to have secured a representative sample based on any scientific methodology of conducting a poll at any time, subsequent to the strike, which would have any validity. All of them in substance claimed that there was no logic between the total number of people employed and the percentages that the plaintiff's experts came to.

135 employees gave oral testimony before me, including 113 employees at the Pratt & Whitney plant and 22 at the Hamilton Standard plant. By stipulation of the parties, the transcripts of the testimony of 63 employees (58 Pratt & Whitney and 5 Hamilton Standard) who had testified at the prior trial was admitted into evidence and in addition the transcripts of 10 other employees who testified at the prior trial and who were not available were admitted

of testimony by the undersigned over the defendants' objection. Thus, there was a total of 208 employees whose testimony was available with alleged claims that their absence was involuntary due to defendants' tortious acts at the premises.

The plaintiff does not claim that this constitutes a representative sample in a statistical sense or in the sense that such phrase is used for scientific pollings and surveys, but that they do represent a group encompassing all working shifts, a great variety of types of jobs, a great number of different departments and work locations, a range of age groups, significant differences in education and personalities, both sexes, walkers as well as riders, and individuals of a variety of physical proportions.

The defendant contends that since the employees who testified do not constitute a representative sample in any scientific sense, damages can be computed only upon their individual involuntary absences. The defendant contends that allowing for the maximum acceptance of the credibility of these witnesses with respect to the periods of their absences, the direct labor hours lost at the Pratt & Whitney plant by these employees was 2,208 hours and 216 at Hamilton Standard. (See defendants' Exhibit 40A and 40B as corrected by Appendix to defendant's brief). Even if all of their claimed adjustments to plaintiff's exhibits H-1 and K-1 are rejected, the resulting damages to the plaintiff would be $17,641.91 for Pratt & Whitney, and $405.92 for Hamilton Standard.

The computations made by Dr. Northrop with respect to the total involuntary absences caused by tortious acts at the premises of the Pratt & Whitney plant are set forth in Exhibits P-1 and with respect to Hamilton Standard in Exhibit P-2. P-1 computes the involuntary absences caused by tortious acts at the premises as 33.8% of the total absences, and with respect to P-2 as 29.7%. The testimony of Mr. Mooney with respect to the same subject computes

the proportion of involuntary absences to total absences with respect to the Pratt & Whitney plant during the strike period to be 34.8%, (See plaintiff Exhibit Z-1); and with respect to the Hamilton Standard plant to be 29.2%, (See plaintiff Exhibit Z-2).

Acceptance of these computations would result in damages resulting from involuntary absences due to fear, to coercion arising from tortious conduct of the defendants at the Pratt & Whitney plant to $1,402,413 based on Dr. Northrop's testimony, and to $1,443,905 based on Mr. Mooney's testimony.

In the case of Hamilton Standard applying it to the total damage as set forth in Exhibit K-1, Dr. Northrop's testimony of damages was $684,501 and Mr. Mooney's $672,978. There is thus a tremendous discrepancy between the estimate of damages of the plaintiff in both cases and those of the defendant.

The trier is concerned with reasonable probabilities. *Sheiman* v. *Sheiman,* 143 Conn. 222, 225, 121 A.2d 285; *Boland* v. *Vanderbilt,* 140 Conn. 520, 525, 102 A.2d 362. And the basic aim is to compensate the plaintiff for the loss caused by the tortious conduct so far as money can do so. *Youngset, Inc.* v. *Five City Plaza, Inc.,* 156 Conn. 22, 27, 237 A.2d 366. " 'Where a defendant has by his wrongful conduct made the calculation of damages difficult he will not be heard to urge such difficulty as a reason for not assessing by approximation.' " *Crowell* v. *Palmer,* 134 Conn. 502, 510, 58 A.2d 729. " 'From the very nature of the situation, the amount of loss cannot be proved with exactitude and all than can be required is that the evidence, with such certainty as the nature of the particular case may permit, lay a foundation which will enable the trier to make a fair and reasonable estimate.' "

Ibid. 103, 104.

It is plaintiff's claim that the opinions of Dr. Northrop and Mr. Mooney are based on inferences reasonably drawn from facts which are either assumed to be true or can be found by the trier to be proven; that based on their long experience and knowledge in this field, taking into consideration the total number of persons in the bargaining unit, the total number of members of the locals, the strike benefits paid, the issues involved in the strike, the extent of the violence and other factors set forth in their testimony that conclusions which can be drawn which are not speculative but are more probably true than not. It is further the contention of the plaintiff that the trier in reaching his conclusion is called upon to perform the same function and that the results are not speculative but are reasonable approximations.

While the findings of Judge Gaffney indicate that the tortious conduct of the defendants at the premises continued down to the end of the strike, (see paragraphs 310-317 inclusive of the finding, Record pp. 230-232) the violence prevalent up to and including June 13 was considerably abated by the injunctions issued by this court on June 13, 1960 requiring the defendants to refrain from the illegal picketing and violence which had been engaged in from the time the strike began.

The plaintiff's films taken during this period show extreme acts of violence on the part of the defendants union members at various gates of the plaintiff's plants, both at Pratt & Whitney and Hamilton Standard, making ingress and egress at the breaking hours of the shifts extremely hazardous and dangerous, either walking or in cars, to employees. There can be no doubt that this violence was intended to engender fear and that the effects of this fear continued for a lengthy period after actual violence had ceased at the gates.

The defendants' experts recognized that the effects of fear and intimidation could continue for extended periods

and that repetitive exposure to fear could reenforce and extend such intimidation.

Both Dr. Northrop and Mr. Mooney testified that the effects of such fear engendered by the tortious acts of the defendants at the gates of the Pratt & Whitney and Hamilton Standard plants were a proximate cause of involuntary absences of a portion of the plaintiff direct labor employees down to the end of the strike. Mr. Mooney was of the opinion that after July 1, the daily involuntary absences were limited to those who were afraid to return to work until the strike was over.

In estimating the number of involuntary absences, the daily total in the early period was greater in Dr. Northrop's opinion than the number indicated by Mr. Mooney, while in the latter period of the strike, it was the reverse.

Taking into consideration the injunction of June 13, 1960, a similar injunction issued by the U. S. District Court of this State, the cessation of film taking by the plaintiff of picket activity; the withdrawal of the state police; the widespread publicity both on T.V., Radio and the newspapers of the issuance of the injunctions, I am not persuaded that the after effects of the fear induced by the tortious acts of the defendants caused involuntary absences, after the week ending July 1, 1960. Nor can I find that after that date the tortious acts hitherto referred to which continued down to the end of the strike were a proximate cause of the involuntary absences.

I accept as reasonably probable the testimony of Mr. Mooney who in addition to his qualifications as an expert was an eye witness and participant to events during this period in the labor relations prior to the strike, that from June 9 up to and including July 1, the number of involuntary absences proximately caused by the tortious acts at or on the premises of the Pratt & Whitney plant were approximately 62,900 out of a total absences of the bargaining unit for the full period of the strike of approximately 266,000 or approximately 23.6% (See plaintiff Exhibit Z-1).

With respect to the involuntary absences at the Hamilton Standard plants, I believe the same situation existed from June 9 up to and including July 1, 1960. The involuntary absences numbered 17,600 out of approximately 91,000 during the strike period of 33 days or approximately 19.3%.

The bargaining unit at the Pratt & Whitney plant numbered approximately 16,000 employees which was divided into two equal parts; 50% constituted so-called "direct labor" and the other 50% being termed so-called "indirect labor." The union members of Local 1746 were divided in the same proportion. The bargaining unit at the Hamilton Standard plant constituted 4,350 employees divided similarly and the union members of Local 743 were equally divided. It is therefore reasonable to assume that the total absences in both plants were equally divided between direct and indirect labor employees and that the direct labor employees who were involuntarily absent because of fear of tortious acts of the defendants on or at the premises of the plaintiff's plants bore the same percentage relation to each other as indicated above.

Applying these percentages to the plaintiff's Exhibits H-1 and K-1, I find that the plaintiff damages in Case # 133884 (Pratt & Whitney) is 23.6% of $4,149,151 (Exhibit H-1) or $979,200.

I find that the plaintiff damages in Case #133885 (Hamilton Standard) is 19.3% of $2,304,718 (Exhibit K-1) or $444,811.

In case #133884 judgment may enter for the plaintiff to recover of the defendants the sum of $979,200 with costs, and in Case #133885, judgment may enter for the plaintiff to recover of the defendants the sum of $444,811 together with costs.

JOSEPH E. KLAU
State Referee

Filed September 4, 1973.

STATE OF CONNECTICUT
SUPERIOR COURT
HARTFORD COUNTY

SEPTEMBER 4, 1973

No. 133884

UNITED AIRCRAFT CORPORATION, organized and existing under the laws of the State of Delaware, with its principal place of business in East Hartford, Connecticut.

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS, an unincorporated voluntary association with its principal office in Washington, D. C.

AERONAUTICAL INDUSTRIAL DISTRICT LODGE No. 91, INTERNATIONAL ASSOCIATION OF MACHINISTS, an unincorporated voluntary association with its office in East Hartford, Connecticut; and

INDUSTRIAL AIRCRAFT LODGE 1746 of THE INTERNATIONAL ASSOCIATION OF MACHINISTS, an unincorporated voluntary association with its principal office in East Hartford, Connecticut.

Present Hon. Joseph E. Klau, State Referee.

A judgment dated November 26, 1968, having been rendered in this action as on file, and the defendants having appealed and the plaintiff having cross appealed to the Supreme Court, and the Supreme Court on April 27, 1971, having rendered judgment as on file ordering a new trial as to the amount of compensatory damages, this action came thence to June 27, 1972, when the parties filed their stipulation that the action be referred to the Hon. Joseph E. Klau, State Referee, for hearing and judgment, and thence to September 11, 1972, when the parties appeared and were at issue to the court on the issue of compensatory damages, as on file.

The court, having heard the parties, finds that the plaintiff has sustained compensatory damages as alleged in the substituted complaint to the amount of $979,200.00.

Whereupon, it is adjudged that the plaintiff recover of the defendants $979,200.00 compensatory damages, with interest thereon from September 4, 1973, and its costs taxed at $852.35.

JOSEPH KLAU
State Referee

STATE OF CONNECTICUT
SUPERIOR COURT
HARTFORD COUNTY

SEPTEMBER 4, 1973

No. 133885

UNITED AIRCRAFT CORPORATION, organized and existing under the laws of the State of Delaware, with its principal place of business in East Hartford, Connecticut.

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS, an unincorporated voluntary association with its principal office in Washington, D. C.

AERONAUTICAL INDUSTRIAL DISTRICT LODGE No. 91, INTERNATIONAL ASSOCIATION OF MACHINISTS, an unincorporated voluntary association with its office in East Hartford, Connecticut; and

INDUSTRIAL AIRCRAFT LODGE 743 of THE INTERNATIONAL ASSOCIATION OF MACHINISTS, an unincorporated voluntary association with its principal office in Windsor Locks, Connecticut.

Present Hon. Joseph E. Klau, State Referee.

A judgment dated November 26, 1968, having been rendered in this action as on file, and the defendants having

appealed and the plaintiff having cross appealed to the Supreme Court, and the Supreme Court on April 27, 1971, having rendered judgment as on file ordering a new trial as to the amount of compensatory damages, this action came thence to June 27, 1972, when the parties filed their stipulation that the action be referred to the Hon. Joseph E. Klau, State Referee, for hearing and judgment, and thence to September 11, 1972, when the parties appeared and were at issue to the court on the issue of compensatory damages, as on file.

The court, having heard the parties, finds that the plaintiff has sustained compensatory damages as alleged in the substituted complaint to the amount of $444,811.00.

Whereupon, it is adjudged that the plaintiff recover of the defendants $444,811.00 compensatory damages, with interest thereon from September 4, 1973, and its costs taxed at $420.85.

JOSEPH KLAU
State Referee

Stipulation Combining Appeals

Whereas the defendants in each of the above entitled actions intend to appeal from the judgment rendered in each action to the Supreme Court, the parties, pursuant to the provisions of the Practice Book, Section 606, hereby stipulate that both of said appeals be combined, inasmuch as said actions were tried together and they present the same or similar issues.

PLAINTIFF
By WIGGIN & DANA, *Its Attorneys*
DEFENDANTS
By NORMAN ZOLOT, *Their Attorney*

Filed September 17, 1973.

Defendants' Appeal

The appeals in the above entitled actions having been combined by order of the Court, the defendants appeal to the Supreme Court from the judgments rendered in said actions.

DEFENDANTS

By NORMAN ZOLOT, *Their Attorney*

Filed September 21, 1973.

SUPREME COURT

June Term, 1975

[Filed Sept. 2, 1975].

UNITED AIRCRAFT CORPORATION *v.* INTERNATIONAL ASSOCIATION OF MACHINISTS ET AL.

Action to determine compensatory damages, brought to the Superior Court in Hartford County and referred to *Hon. Joseph E. Klau,* state referee, who, exercising the powers of that court, rendered judgment awarding the plaintiff compensatory damages, from which the defendants appealed to this court. *No error.*

Norman Zolot and, of the District of Columbia bar, *Mozart G. Ratner,* with whom was *Burton S. Rosenburg,* for the appellants (defendants).

S. Robert Jelley, with whom was *Robert F. Cavanaugh,* for the appellee (plaintiff).

LOISELLE, J. These two appeals, which have been consolidated for presentation to this court, arise from a trial on remand in combined companion cases brought by the plaintiff, United Aircraft Corporation, against the four defendants, representatives of three different union organizational levels. The plaintiff had sought damages from the defendants, jointly and severally, in actions based on allegedly tortious acts committed in the course of illegal strikes at the plaintiff's Pratt & Whitney Division plants in East

Hartford and Manchester and at its Hamilton Standard Division plants in Windsor Locks and Broad Brook.[1]

A detailed account of the events leading up to the strike which began on June 8, 1960, and of the events during the strike which terminated on August 8 and 9, 1960, is set forth in *United Aircraft Corporation* v. *International Assn. of Machinists,* 161 Conn. 79, 285 A.2d 330, cert. denied, 404 U.S. 1016, 92 S.Ct. 675, 30 L.Ed.2d 663, the previous appeal in these cases. The previous trial court found liability against the four defendants. In assessing damages, that court first determined the monetary value of the total strike loss sustained by the plaintiff because of a deprivation of a portion of its productive labor force. The total strike loss was based primarily on two elements: (1) excessive manufacturing costs owing to the diminution of the labor force, and (2) unabsorbed fixed overhead expenses, referred to as "wasted overhead," owing to diminution of the labor force. Having arrived at a figure representing the value of the total strike damage sustained by the plaintiff owing to deprivation of a portion of its productive labor force, that court then determined the portion of that figure which represented the loss directly due to the involuntary absence of employees because of fear and coercion as a result of the illegal, tortious acts attributed to the defendants. *United Aircraft Corporation* v. *International Assn. of Machinists,* supra, 100-102.

This court upheld that trial court's decision as to the liability of the four defendants and the award of punitive or exemplary damages, but remanded the case for reassessment of compensatory damages in accordance with the opinion which pointed out that the trial court was correct in basing its computation of damages on excessive manufacturing costs and wasted overhead during the strike period and

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[1] The plaintiff's plants in North Haven and Meriden and in West Palm Beach, Florida, are not involved in the present controversy.

in relying on evidence presented, but that it was in error in including the effects of tortious acts away from the premises of the plaintiff, in computing the time period, and in excluding the item of overtime hours worked during the strike period in the computation of wasted overhead. Ibid.

The remand directed as follows: "In computing the monetary value of the plaintiff's strike losses at the Pratt & Whitney Division plants and Hamilton Standard Division plants due to the involuntary absence of employees because of fear and coercion as a result of the illegal, tortious activities which occurred at these plants, the trial court should, on remand, determine the amount of absence from the Pratt & Whitney Division plants which was involuntary as the result of the illegal, tortious activities which occurred at those plants from June 8 to August 8 and 9, 1960, and the amount of absence from the Hamilton Standard Division plants which was involuntary as a result of the illegal, tortious activities which occurred at those plants from June 8 to August 8 and 9, 1960. On the basis of the figures representing the monetary value of the total strike losses sustained by the plaintiff at each of these divisions due to the loss of productive labor and the figures representing the aforementioned amount of involuntary absence the damage to which the plaintiff is entitled may be determined." Id., 104-105.

Upon remand, the trial court found that $4,149,151 was the total strike loss incurred during the strike period at Pratt & Whitney's East Hartford and Manchester plants, that $2,304,718 was the total strike loss incurred during the strike period at Hamilton Standard's Windsor Locks and Broad Brook plants. It found that the plaintiff's strike loss at the Pratt & Whitney Division plants proximately caused by the defendants' tortious acts on the plant premises was 23.6 percent of the total strike loss of $4,149,151 or $979,200. It found that the plaintiff's strike loss at the Hamilton Standard Division plants proximately caused by the defendants' tortious acts on the plant premises was 19.3 percent of the total loss of $2,304,718 or $444.811. Judgments were rendered for the plaintiff in these sums together with interest and costs. The defendants have appealed.

The court's finding, which has 401 numbered paragraphs covering 109 printed pages of the record, is the subject of an extensive attack by the defendants. No useful purpose would be served by a detailed discussion of these assignments of error. Suffice it to say that after laborious hours and days spent in examining and comparing the draft finding and the finding of the court with the long and detailed appendices, nine paragraphs of the draft finding have been added to the finding, and one paragraph of the finding has been deleted. None of those corrections materially affects the finding of the court which was detailed and comprehensive.

In accordance with the remand, the court, after finding excessive manufacturing costs and wasted overhead, determined the monetary value of the total strike loss sustained by the plaintiff as the first step in its assessment of damages. That determination, $4,149,151 for the Pratt & Whitney Division and $2,304,718 for the Hamilton Standard Division, is attacked by the defendants.

The principal source for establishing values for manufacturing costs and wasted overhead are exhibits in which the figures used were taken from the actual ledgers and payroll records of the plaintiff. The court found that the figures and computations in these exhibits were accurate and correct.

The court accepted the plaintiff's standard accounting system as a reasonable basis for computing the plaintiff's excessive manufacturing costs and waster overhead owing to the man-hours of labor lost. It relied on the evidence of the plaintiff's manufacturing costs for the period from January to May, 1960, as a base for computing excess manu-

facturing costs during the strike period. For this computation the court took into consideration six categories of Pratt & Whitney's shop losses: labor efficiency variance, overtime premiums, corrective work, training, spoiled work, and make or buy conversions. Those same categories, with the exception of training costs, were considered in computing Hamilton Standard's excess manufacturing costs. Other categories of shop losses, such as night shift premiums, third shift premiums and waiting time, were not included in the computation. Further, additional losses caused by the strike which could not be measured objectively, such as losses in the experimental shop, losses owing to the absence of indirect labor employees, and losses from strike disruptions after the strike, were not considered. The cost of wasted overhead at both divisions as found by the court is supported by the findings. Included in the calculation of wasted overhead was the item of overtime hours worked during the strike as directed by this court in the remand. *United Aircraft Corporation* v. *International Assn. of Machinists,* 161 Conn. 79, 101, 285 A.2d 330.

The defendants claim that items in these exhibits relied upon by the court were inaccurate and that the court was in error in accepting this evidence. The defendants were permitted to advance and pursue these claims despite the plaintiff's objections that they were beyond the mandate of this court's remand. The claims raised specifically concern (1) spoiled work and waiting time, being items which relate to excess manufacturing cost, and (2) accelerated depreciation, general and administrative expenses, and work during vacation shutdown, being items which relate to wasted overhead. The court found that during the strike there was a high incidence of spoiled work; it accepted the spoiled work items in the exhibits. This is a matter of credibility. Waiting time was not considered in the computation of the plaintiff's losses. It was the opinion of the plaintiff's comptroller that he could not associate the cause of waiting time with the presence or absence of a strike and that waiting time

was not a relevant factor. Consequently, it was not included either in the base period of January to May, 1960, or in the strike period. The Court accepted this evidence. The court specifically found that accelerated depreciation as an expense was allowed by the United States government for tax purposes and contract purposes under certificates of necessity, and that the plaintiff regularly and consistently used accelerated depreciation in its regular accounting and profit and loss statements in 1960, and in the years prior thereto. The court also specifically found that general and administrative expenses included the costs of the accounting department, executive staff, and other management departments, and that these were fixed expenses and were an excessive burden on the low level of production. It concluded that these general and administrative expenses were properly calculated to determine wasted overhead. The court noted that no overhead was claimed during the vacation shutdown periods and found that it was not possible to calculate how many persons would have been expected to work had there been no strike or to calculate whether the hours actually worked were more or less than the expectation, and that under these circumstances it was fair and reasonable for the plaintiff to exclude both the overhead and the direct labor hours during the vacation shutdown periods from its calculations of strike losses. The claims relative to these items all involve questions of fact; they were all resolved against the defendants. The findings on these matters are supported by the appendices and must stand. As to the accuracy of the items considered by the court in computing the plaintiff's excess manufacturing costs and wasted overhead, "[i]t was enough that the court relied on evidence which showed 'the extent of . . . [these items] as a matter of just and reasonable inference, although the result be only approximate.' *Story Parchment Co.* v. *Paterson Parchment Paper Co.,* 282 U.S. 555, 563, 51 S.Ct. 248, 75 L.Ed. 544; *Ball* v. *T. J. Pardy Construction Co.,* 108 Conn. 549, 551, 143 A. 855." *United Aircraft Cor-*

poration v. *International Assn. of Machinists*, supra, 101. See also *Dunn Bros., Inc.* v. *Retail Clerks, Local 1529* (Tenn Ct. App.) 69 Labor Cases ¶ 52,956. The court properly computed excessive manufacturing costs and wasted overhead.

The defendants extensively and vigorously attack the court's findings and conclusions that 23.6 percent of the bargaining unit and direct labor absences during the strike period at the Pratt & Whitney Division and 19.3 percent of the bargaining unit and direct labor absences at the Hamilton Standard Division were owing to the tortious acts of the defendants. The principal, and pivotal question raised by the defendants' attack is whether the court's determination of involuntary absences owing to tortious and coercive acts of the defendants was based on competent evidence, and specifically, whether the court could legally rely on the opinion of Morgan R. Mooney, the plaintiff's former vice president for industrial relations, as to the amount of involuntary absence during the strike period up to and including July 1, 1965. It is the defendants' contention that, on the factual evidence presented, the amount of involuntary absence attributable to strike violence cannot be estimated with "reasonable probability" or with any degree of assurance necessary to support the judgment of a court of law.

At the trial on remand, the plaintiff offered the testimony of a number of employee witnesses who testified that their absence during the strike was caused by the defendants' tortious acts at the plaintiff's plant premises. One hundred and thirty-five employees testified as oral witnesses, and the transcripts of the testimony of 73 other employees who had testified at the previous trial were introduced into evidence. Mooney and Herbert R. Northrup, professor of industry at the Wharton School of Finance and Commerce, testified at great length as to their opinions of the amount of involuntary absenteeism during the strike period. Each

produced tabulations of such opinions. Northrup's opinion based on his tabulations was that 33.8 percent of the absences at the Pratt & Whitney Division and 29.7 percent of the absences at the Hamilton Standard Division were caused by tortious acts at the plant premises. Mooney's opinion, based on his tabulations, was that 34.8 percent of the absences at the Pratt & Whitney Division and 29.2 percent of the absences at the Hamilton Standard Division were caused by the tortious acts at the plant premises. The total number of workers absent each day was not in dispute, having been derived by deducting the number of workers present each day at the plants, less newly hired employees, from the number in the bargaining unit. The court found that the effects of the violence and mass picketing at the plaintiff's plant premises continued up to and including July 1, 1960. It also found that 23.6 percent of the bargaining unit absences at the Pratt & Whitney Division and 19.3 percent of the bargaining unit absences at Hamilton Standard Division were caused by the defendants' tortious acts at the plant premises. The court's findings with regard to the percentages of involuntary findings with regard to the percentages of involuntary absences found coincide with Mooney's opinions for the period from the start of the strike, June 8, 1960, up to and including July 1, but do not include Mooney's opinion of involuntary absences from July 2 to the end of the strike period.

The defendants assert that the plaintiff's experts, Mooney and Northrup, were not qualified to state an opinion as to the number of absences at the plaintiff's plants caused by tortious acts on the plant premises during the strike. The court however, found that both witnesses qualified as experts to render opinions regarding involuntary absenteeism during the strike.[2] "The determination of the qualification

[2] The court found the following: Herbert R. Northrup is professor of industry at the Wharton School of Finance and Commerce of the University of Pennsylvania. From 1964 to 1969, he was chairman of the department of industry of the Wharton

of an expert is largerly a matter for the discretion of the trial court." *Coffin* v. *Laskau*, 89 Conn. 325, 329 94 A. 370; *Oborski* v. *New Haven Gas Co.*, 151 Conn. 274, 280, 197 A.2d 73. The trial court's decision is not to be disturbed on appeal "unless that discretion has been abused, or the error is

School. He has a bachelor of arts degree in economics from Duke University, and master of arts and doctor of philosophy degrees in industrial relations and labor economics from Harvard University. His particular areas of specialization have been (1) race relations and civil rights in industry and (2) collective bargaining. He was a senior hearing officer with the war labor board during World War II. During the period from 1949 to 1961, he was employed in private industry, first as industrial relations consultant with Ebasco Services, a consulting firm, then as vice president for industrial relations for Penn-Texas Corporation, and finally as employer relations consultant with General Electric Company, where he was a member of the top industrial relations staff and was responsible for all employee relations in 70 plants employing 100,000 employees. He has published about 150 to 200 articles in various professional journals, and has written about 15 books. One of the books is a textbook entitled "Economics of Labor Relations," now in its seventh edition, which is the most widely used textbook in its field and is used at about 275 colleges and universities. He has written an article and a book dealing with the labor relations policies of General Electric Company, including General Electric's strike in October, 1960.

Morgan R. Mooney was vice president for industrial relations of United Aircraft Corporation at the time of the first trial in 1968, and retired from that position on July 31, 1972. At the time of the strike in 1960, he was personnel director of United Aircraft Corporation. He graduated from Yale University in 1929 with a bachelor of arts degree. Thereafter he was a graduate student at Yale studying labor economics and political science. From 1933 until 1935 he worked for the federal government as a labor compliance officer in the national industrial recovery administration. He then became deputy commissioner of labor in the Connecticut department of labor and factory inspection from 1935 to 1942. In that position he acted as secretary of the Connecticut state board of mediation and arbitration, and he had the responsibility of investigating and attempting to mediate and settle strikes and other labor disputes throughout the state of Connecticut. He acted as investigator or mediator or both in about 75 to 100 strikes, and in

clear and involves a misconception of the law." 31 Am. Jur. 2d 531, Expert and Opinion Evidence, § 31; *State* v. *Lally*, Conn. (36 Conn. L.J. No. 33, pp. 1, 4); *Nash* v. *Hunt*, Conn. (35 Conn. L.J., No. 49, pp. 7, 9); *Siladi* v. *McNamara*, 164 Conn. 510, 513, 325 A.2d 277. From the footnoted findings which recite the witnesses' qualifications and experience in the field of industrial relations, it is clear that they were reasonably qualified as experts to form and render opinions as to the effects of violence during a strike. The court did not abuse its discretion in ruling them to be experts, qualified to render opinions on the issues in this case.

The defendants claim that even though Northrup and Mooney may be found to be experts in their field, their testimony should not have been admitted as there was no factual basis for their opinions. It is the defendant's position that the only competent evidence of involuntary absences owing to strike violence was the testimony either of the absentees themselves or of a representative sample of all the employees. The court found that the group of employee witnesses who testified or whose testimony was received into evidence by transcripts was not a representative sample of all the employees employed in 1960, in a statistical or scientific sense. The court further found that "[i]n view of the pretrial and legal problems of obtaining reliable data from a statistically representative sample of absentees either during or immediately after the strike was plaintiff able to obtain reliable data from a

so doing discussed strikes, strike methods, and strike measures with union leaders, members and negotiators. In 1942 he was employed by United Aircraft Corporation, first as assistant to the personnel director and then as assistant personnel director, before becoming personnel director in 1957. In his position as personnel director, Mooney was thoroughly familiar with all aspects of the 1960 strikes at Pratt & Whitney and Hamilton Standard, having been an eye witness to picket line activities at all plants during the strike and a participant in all negotiations with the unions prior to and during the strike.

statistically representative sample of absentees for introduction into evidence." The defendants argue that, in light of those findings, the only basis for a judgment of damages was that group of absentee witnesses whose testimony as to the amount of time they lost from work owing to the tortious acts of the defendants was heard by the court. The court, however, also considered the testimony of the two experts, and it is that consideration which is under attack.

In the previous opinion, this court observed that the trial court determined the percentage of employees who stayed away involuntary from their employment primarily on the basis of Northrup's testimony. The court also commented that "[W]hile expert opinion would be relevant provided the court accorded it persuasive weight as was done in these cases, other methods of determining the elements of involuntary absence of equal or greater weight might be resorted to such as a representative sampling of employees who refrained from work. The evidence to be relied on for arriving at a reasonable approximation is for the court to decide." *United Aircraft Corporation* v. *International Assn. of Machinists,* 161 Conn. 79, 105-106, 285 A.2d 330. In view of the trial court's finding that a statistically representative sample of absentees was not obtainable, the court did not, as claimed by defendants, err in considering the opinions of the two experts who testified for the plaintiff.

This state has long had a simple and workable standard for the admissibility of expert opinion "The true test of the admissibility of such testimony is not whether the subject matter is common or uncommon, or whether many persons or few have some knowledge of the matter; but it is whether the witnesses offered as experts have any peculiar knowledge or experience, not common to the world, which renders their opinions founded on such knowledge or experience any aid to the court or the jury in determining the questions at issue." *Taylor* v. *Monroe,* 43 Conn. 36, 44, cited with approval in *Schomer* v. *Shilepsky,* — Conn. (37 Conn. L.J., No. 4, pp. 10, 12). Implicit in this standard is the requirement, later articulated, that the expert's knowledge or experience must be directly applicable to the matter in issue. *Siladi* v. *McNamara,* 164 Conn. 510, 513-14, 325 A.2d 277.

Mooney based his opinions upon his entire personal experience and his personal knowledge, particularly that of the strike violence. He had viewed movies at the plaintiff's plant premises of the violence and had personally observed the violence and its *impact* upon the employees arriving at the premises to work. *He also observed those employees who turned around at the gate and left.* In ariving at an opinion as to the number of involuntary absences during the strike, he took into account his estimate of "committed strikers," those strikers who were committed to staying out for the duration of the strike. He conservatively estimated the committed strikers by relating his estimate to the number of union members who voted to strike, the average number of union members paid strike benefits, and the number of strikers who registered to return to work at the end of the strike. He also took into consideration, but did not quantify, employees who wanted to wait and see the outcome of the strike, employees who did not want to alienate fellow employees, employees who went out on strike but returned for economic reasons, and employees who were absent because of fear created by tortious acts committed off the premises.

Northrup based his opinion on his own experience and research over the years and on assumptions in a hypothetical question put to him, which included substantially the same factors as those relied upon by Mooney, including a review of the filmed strike violence.

The defendants' experts, authorities in labor, economics, social sciences, political sociology, and psychology each

testified that the plaintiff's expert witnesses' opinions were speculative and mere guesses. It was their opinion that the only source of reasonable approximation was data based upon accurately ascertained subjective motivation of each absent employee which could be obtained only through interview or testimony, with results of varying degrees of accuracy. All testified that, except by examining the employees' actual reasons, there is no probative source of evidence to support any reference (sic) as to the reasonably approximate quantum of involuntary absences on any day or on all days of the strike. The court did not accept the testimony of the defendants' experts as to the opinions of Mooney and Northrup. The fact that the subjective motivation or state of mind, in this case the absentees' fear, could be infered by the trier from other facts is a well settled rule of evidence. Frequently the only method of establishing what lay in the mind of a person when he acted is through such an inference. *State* v. *Moynahan*, 164 Conn. 560, 579, 325 A.2d 199, cert. denied, 414 U.S. 976, 94 S.Ct. 291, 38 L. Ed. 2d 219; *Hennessey* v. *Hennessey,* 145 Conn. 211, 214-215, 140 A.2d 473.

The defendants argue that it is apparent that the court rejected Northrup's opinion and adopted a portion of Mooney's opinion. Neither the finding nor the memorandum of decision indicates that the court rejected the evidence of the employee witnesses, the opinion of Northrup or a portion of Mooney's opinion. It is evident that the court placed more reliance on a portion of Mooney's opinion, that is, his opinion of absences attributable to the tortious acts of the defendant from the beginning of the strike to and including July 1, 1960. The court was concerned with reasonable probabilities. *United Aircraft Corporation* v. *International Assn. of Machinists,* 161 Conn. 79, 103, 285 A.2d 330; *Sheiman* v. *Sheiman,* 143 Conn. 222, 225, 121 A.2d 285. The circumstance was not one in which all factors could be proved with mathmatical precision.

What was cited in the previous appeal (p. 104) is worth reiterating here: "Where a defendant has by his wrongful conduct made the calculation of damages difficult, he will not be heard to urge such difficulty as a reason for not assessing by approximation." *Crowell* v. *Palmer,* 134 Conn. 502, 510, 58 A.2d 729. See also *Valitsky* v. *Valitsky,* — Conn. (36 Conn. L.J., No. 39, pp. 25, 26); *Baker* v. *Baker,* — Conn. (35 Conn. L.J., No. 52, pp. 1, 5). "From the very nature of the situation, the amount of loss cannot be proved with exactitude and all that can be required is that the evidence, with such certainty as the nature of the particular case may permit, lay a foundation which will enable the trier to make a fair and reasonable estimate." *Ball* v. *T. J. Pardy Construction Co.,* 108 Conn. 549, 551, 143 A.2d 855; see also *Collens* v. *New Canaan Water Co.,* 155 Conn. 477, 490, 234 A.2d 825. Considering the experience and knowledge of Northrup and Mooney and the facts upon which their opinions were based, the court did not rely unreasonably upon their opinions, particularly those of Mooney, so as to make its decision an error of law.

The defendants further argue that as the court adopted Mooney's estimate of absences from tortious conduct of the defendants for the period prior to and including July 1, 1960, but rejected his estimate of absences during the subsequent period of the strike, this rejection fatally undercut his pre-July 1 opinion and makes the court's reliance upon that opinion worthless. The finding of the court that the effects of the violence and mass picketing at the plaintiff's plants continued up to and including July 1, 1960, is attacked by the defendants as unsupported by the evidence. The tabulations of daily absences from both divisions of the plaintiff during the strike period clearly show a definite leveling off of absences from July 1 to the termination of the strike. In examining the appendices in support of this finding, the testimony of Mooney

is significant in his explanation of the leveling off of absences after July 1. It was his opinion that, in the period after July 1, employees who were kept out of work because of the tortious acts of the defendants simply were not going to come back until the strike was over. It is apparent that the court did not reject Mooney's opinion as to the number of persons who were still affected by fear after July 1, but the court's reasoning is clearly enunciated in its memorandum of decision wherein it is stated: "Taking into consideration the injunction of June 13, 1960, a similar injunction issued by the U.S. District Court of this State, the cessation of film taking by the plaintiff of picket activity; the withdrawal of the state police; the widespread publicity both on T.V., radio and the newspapers of the issuance of the injunctions, I am not persuaded that the after effects of the fear induced by the tortious acts of the defendants caused involuntary absences after the week ending July 1, 1960. Nor can I find that after that date the tortious acts hitherto referred to which continued down to the end of the strike were a proximate cause of the involuntary absences." In weighing the testimony of an expert, the trier of fact may accept part of the testimony of an expert without being bound by all of the opinion of an expert. *Northeastern Gas Transmission Co.* v. *Tersana Acres, Inc.,* 114 Conn. 509, 512, 134 A.2d 253; *Clark* v. *Haggard,* 141 Conn. 668, 674, 109 A.2d 358. The court was not in error in finding that after July 1, the plaintiff did not prove the proximate causation of the tortious acts to the involuntary absences. *Robinson* v. *Southern New England Telephone Co.,* 140 Conn. 414, 418-19, 426, 101 A.2d 491; *Kilduff* v. *Kalinowski,* 136 Conn. 405, 407-408, 71 A.2d 593. This determination did not affect or destroy the weight which the court gave to Mooney's testimony and opinion concerning that period between the commencement of this strike and July 1, 1960.

The calculations of the percentages of absences due to the tortious acts of the defendants as determined by the

court as related to the monetary value of the total strike losses sustained by the plaintiff at each of its divisions were supported by the evidence and in accordance with law and were determined in conformity with the remand of this court.

There is no error.

In this opinion the other judges concurred.

Nos. 133884 and 133885

UNITED AIRCRAFT CORPORATION

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL.

October 7, 1975.

The defendants' preliminary motion to reargue filed September 12, 1975, and their supplemental motion to reargue filed September 22, 1975, are denied.

By the Court,

/s/ HOUSE
Chief Justice

SUPREME COURT OF THE UNITED STATES

No. A-582

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, ET AL., *Petitioners,*

v.

UNITED AIRCRAFT CORPORATION

Order Extending Time To File Petition for Writ of Certiorari

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including February 15, 1976.

/s/ THURGOOD MARSHALL
Associate Justice of the Supreme Court of the United States

Dated this 30th day of December, 1975.

Order Further Extending Time To File Petition for Writ of Certiorari

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, further extended to and including March 5, 1976.

/s/ THURGOOD MARSHALL
Associate Justice of the Supreme Court of the United States

Dated this 29th day of January, 1976.